Tab 1	**SB 152** by **Grimsley**; (Similar to H 1241) Ordering of Medication				
556062	D	S	AP, Grimsley	Delete everything after	02/24 09:52 AM
725966	SD	S	AP, Grimsley	Delete everything after	02/24 04:57 PM

Tab 2	**CS/SB 212** by **HP, Gaetz**; (Compare to H 0085) Ambulatory Surgical Centers				
317634	D	S	AP, Gaetz	Delete everything after	02/24 09:59 AM
418830	AA	S	AP, Grimsley	Delete L.202:	02/24 12:39 PM
801734	AA	S	AP, Grimsley	Delete L.206:	02/24 12:39 PM
584394	AA	S	AP, Flores	btw L.233 - 234:	02/24 05:14 PM
597648	A	S	AP, Flores	btw L.74 - 75:	02/24 10:14 AM

Tab 3	**SB 234** by **Gaetz (CO-INTRODUCERS) Hays, Abruzzo, Ring, Clemens, Soto**; (Similar to CS/CS/H 0139) Dental Care				
406770	PCS	S	AP, AHS		11/20 03:26 PM

Tab 4	**CS/SB 318** by **EP, Richter**; (Similar to CS/1ST ENG/H 0191) Regulation of Oil and Gas Resources				
508372	PCS	S	AP, AGG		01/27 04:25 PM

Tab 5	**SB 356** by **Hutson**; (Similar to H 0387) Mental or Physical Disabilities

Tab 6	**CS/SB 400** by **EP, Hays**; (Similar to CS/CS/H 0561) Organizational Structure of the Department of Environmental Protection				
517418	D	S	AP, Hays	Delete everything after	02/23 08:41 AM

Tab 7	**CS/SB 432** by **ED, Hutson**; (Identical to CS/H 0189) Teacher Certification

Tab 8	**CS/SB 434** by **ED, Garcia (CO-INTRODUCERS) Gaetz**; (Similar to CS/CS/CS/H 0287) Principal Autonomy Pilot Program Initiative				
899122	PCS	S	AP, AED		01/15 03:00 PM

Tab 9	**CS/SB 436** by **CJ, Simpson (CO-INTRODUCERS) Dean**; (Similar to CS/CS/H 0257) Terroristic Threats				
418634	PCS	S	AP, ACJ		02/15 11:45 AM
696840	PCS:A	S	AP, Galvano	Delete L.108 - 139:	02/23 10:39 AM

Tab 10	**SB 442** by **Flores (CO-INTRODUCERS) Garcia**; (Identical to H 0119) Educational Facilities

Tab 11	**CS/SB 524** by **HE, Gaetz**; (Compare to H 5003) State University System Performance-based Incentives					
314320	PCS	S		AP, AED		12/07 01:52 PM
741272	PCS:D	S		AP, Gaetz	Delete everything after	02/24 11:12 AM
189798	PCS:AA	S	L	AP, Flores	btw L.796 - 797:	02/24 05:35 PM
803616	PCS:AA	S	L	AP, Montford	Delete L.1310 - 1311:	02/24 07:34 PM
538852	PCS:AA	S	L	AP, Montford	Delete L.1298 - 1371:	02/24 07:35 PM
567806	PCS:AA	S	L	AP, Montford	Delete L.1156 - 1160:	02/24 07:36 PM
359184	PCS:AA	S	L	AP, Montford	Delete L.943 - 966:	02/24 07:36 PM
476310	PCS:AA	S	L	AP, Montford	Delete L.944:	02/24 07:37 PM

Tab 12	**SB 572** by **Altman**; (Similar to CS/H 0325) Involuntary Examinations Under the Baker Act

Tab 13	**CS/SB 718** by **TR, Sobel**; (Identical to H 1105) Identification Cards					
~~713820~~	A	S	WD	AP, Ring	Delete L.25 - 43:	02/24 11:45 AM
210288	A	S	L	AP, Hukill	Delete L.31 - 35:	02/24 05:39 PM

Tab 14	**CS/SB 748** by **HP, Flores**; (Similar to CS/H 0375) Physician Assistants					
238882	A	S		AP, Flores	Delete L.216 - 241.	02/24 09:51 AM
303878	A	S		AP, Flores	Delete L.364 - 388.	02/24 09:51 AM

Tab 15	**SB 850** by **Bradley**; (Similar to H 0549) Offenses Concerning Racketeering and Illegal Debts

Tab 16	**SB 886** by **Benacquisto**; (Compare to CS/CS/CS/1ST ENG/H 0669) Parent and Student Rights					
203738	PCS	S		AP		02/05 03:54 PM
191726	PCS:A	S	L	AP, Montford	Delete L.241 - 245:	02/24 07:10 PM

Tab 17	**CS/SB 918** by **HP, Richter**; (Similar to CS/CS/H 0941) Licensure of Health Care Professionals					
857014	PCS	S		AP, AHS		01/29 09:02 AM
553418	PCS:A	S		AP, Grimsley	btw L.341 - 342:	02/23 02:02 PM
247706	PCS:A	S		AP, Richter	Delete L.353 - 355:	02/23 04:55 PM
357670	PCS:A	S		AP, Hays	Delete L.396 - 530:	02/24 08:44 AM
~~309734~~	PCS:A	S	WD	AP, Hays	Delete L.609 - 615:	02/23 11:32 AM
675498	PCS:A	S		AP, Grimsley	btw L.737 - 738:	02/24 08:51 AM
760688	PCS:A	S		AP, Richter	btw L.1291 - 1292:	02/23 04:56 PM
327676	PCS:AA	S		AP, Richter	Delete L.14:	02/24 12:37 PM

Tab 18	**SB 944** by **Richter (CO-INTRODUCERS) Gaetz**; (Identical to H 0799) Out-of-state Fee Waivers for Active Duty Service Members

Tab 19	**CS/SB 970** by **BI, Richter**; (Similar to CS/CS/H 0783) Unclaimed Property

Tab 20	**CS/SB 984** by **HE, Legg**; (Compare to CS/H 7019) Education Access and Affordability

Tab 21	**CS/SB 986** by **BI, Simpson**; (Identical to CS/H 0613) Workers' Compensation System Administration

Tab 22	**CS/SB 1010** by **AG, Montford**; (Similar to CS/CS/2ND ENG/H 7007) Department of Agriculture and Consumer Services					
249924	PCS	S		AP, AGG		01/25 11:03 AM
835292	PCS:A	S		AP, Hays	btw L.342 - 343:	02/24 04:00 PM
~~477236~~	A	S	WD	AP, Hays	btw L.338 - 339:	02/23 12:36 PM

Tab 23	**CS/SB 1050** by **RI, Brandes**; (Similar to H 1187) Regulated Professions and Occupations					
453996	PCS	S		AP, AGG		02/19 02:15 PM
432296	PCS:A	S		AP, Hays	Delete L.515:	02/24 01:53 PM

Tab 24	**CS/SB 1052** by **EP, Hays**; (Compare to CS/CS/CS/H 0589) Environmental Control					
510850	PCS	S		AP, AGG		02/15 03:04 PM
377014	PCS:A	S		AP, Hays	btw L.65 - 66:	02/23 08:46 AM
658010	PCS:A	S		AP, Hays	Delete L.111 - 140:	02/23 08:44 AM

Tab 25	**SB 1060** by **Legg**; (Compare to H 1343) Career and Adult Education					
678212	A	S		AP, Gaetz	Delete L.168 - 197:	02/24 09:47 AM

Tab 26	**SB 1166** by **Gaetz**; Education Funding					
126962	PCS	S		AP		02/05 03:48 PM
927682	PCS:D	S		AP, Gaetz	Delete everything after	02/24 09:57 AM
412670	PCS:AA	S		AP, Negron	btw L.1566 - 1567:	02/24 03:35 PM
645540	PCS:AA	S	L	AP, Hays	btw L.1049 - 1050:	02/24 07:33 PM

Tab 27	**CS/SB 1170** by **BI, Detert**; (Compare to CS/CS/H 0951) Health Plan Regulatory Administration					
899852	PCS	S		AP, AHS		02/15 03:04 PM
880026	PCS:A	S		AP, Richter	Before L.69:	02/23 01:53 PM
620848	PCS:A	S		AP, Richter	Delete L.183 - 184:	02/23 02:04 PM

Tab 28	**CS/SB 1196** by **ED, Bean (CO-INTRODUCERS) Hutson**; (Identical to CS/H 1305) Emergency Allergy Treatment in Schools

Tab 29	**CS/SB 1256** by **CJ, Brandes**; (Identical to CS/H 1149) Alternative Sanctioning

Tab 30	**SB 1282** by **Dean**; (Similar to 1ST ENG/H 7013) Fish and Wildlife Conservation Commission					
389224	PCS	S		AP		02/15 03:04 PM

Tab 31	**SB 1312** by **Dean**; Protection Zones for Springs

Tab 32	**SB 1322** by **Latvala**; (Identical to H 1279) Juvenile Detention Costs					
105452	PCS	S		AP, ACJ		02/15 11:47 AM
401798	PCS:D	S		AP, Latvala	Delete everything after	02/24 01:49 PM
558532	D	S	L	AP, Latvala	Delete everything after	02/24 10:45 AM

Tab 33	**CS/SB 1370** by **HP, Grimsley**; (Identical to CS/H 1245) Medicaid Provider Overpayments

Tab 34	**CS/SB 1422** by **BI, Simmons**; (Similar to CS/H 1163) Insurer Regulatory Reporting					
364684	PCS	S		AP, AGG		02/15 03:04 PM

Tab 35	**CS/CS/SB 1442** by **BI, HP, Garcia**; (Similar to CS/CS/CS/H 0221) Out-of-network Health Insurance Coverage					
182608	A	S		AP, Garcia	Delete L.64 - 79:	02/24 09:20 AM
765128	A	S		AP, Garcia	btw L.105 - 106:	02/24 09:20 AM
354450	A	S		AP, Garcia	Delete L.152 - 153:	02/24 09:20 AM
240662	A	S		AP, Garcia	Delete L.161 - 162:	02/24 09:20 AM
457464	A	S		AP, Negron	Delete L.165 - 193:	02/24 09:53 AM
386262	A	S	L	AP, Grimsley, Negron	btw L.146 - 147:	02/24 04:39 PM

Tab 36	**SB 1496** by **Bradley (CO-INTRODUCERS) Gaetz**; (Compare to CS/CS/CS/H 0221) Transparency in Health Care					
664560	PCS	S		AP, AHS		02/05 04:14 PM
523828	PCS:D	S		AP, Gaetz	Delete everything after	02/24 04:53 PM

Tab 37	**CS/SB 1508** by **CA, Simpson**; (Similar to H 1379) Airport Zoning

Tab 38	**CS/SB 1528** by **RI, Simpson**; (Similar to CS/CS/H 1347) Illicit Drugs

460300	PCS	S	AP, ACJ		02/12 09:47 AM

Tab 39	**SB 1534** by **Simmons**; (Similar to CS/CS/H 1235) Housing Assistance

310862	PCS	S	AP, ATD		02/15 02:43 PM
855434	PCS:A	S	AP, Simmons	Delete L.193 - 755:	02/24 10:11 AM
735674	PCS:AA	S	AP, Simmons	btw L.315 - 316:	02/24 05:15 PM

Tab 40	**CS/SB 1538** by **MS, Evers**; (Similar to CS/H 1219) Veterans Employment

Tab 41	**CS/SB 1604** by **HP, Grimsley**; (Similar to CS/CS/H 1211) Drugs, Devices, and Cosmetics

141410	PCS	S	AP		02/15 03:03 PM
389370	PCS:A	S	AP, Grimsley	Delete L.655:	02/24 04:55 PM
308272	PCS:A	S	AP, Grimsley	btw L.1167 - 1168:	02/24 02:58 PM
338814	PCS:A	S	AP, Grimsley	Delete L.1592 - 1594:	02/24 10:35 AM
847704	PCS:A	S	AP, Grimsley	Delete L.2374 - 2421:	02/24 04:56 PM

Tab 42	**CS/CS/SB 1630** by **EE, BI, Flores**; (Similar to H 0289) Operations of the Citizens Property Insurance Corporation

Tab 43	**SB 1638** by **Lee**; (Similar to CS/1ST ENG/H 1157) Postsecondary Education for Veterans

698686	PCS	S	AP, AED		02/15 10:46 AM
674072	PCS:A	S	AP, Lee	Delete L.23:	02/24 09:55 AM

Tab 44	**CS/SB 1686** by **HP, Bean, Joyner**; (Similar to H 1353) Telehealth

419202	A	S	L	AP, Grimsley	Delete L.34 - 90:	02/24 10:31 AM

Tab 45	**CS/SB 1714** by **ED, Brandes**; (Similar to CS/CS/1ST ENG/H 1365) Competency-based Innovation Pilot Program

464990	PCS	S	AP, AED		02/19 03:45 PM
742326	PCS:A	S	AP, Hays	Delete L.23 - 41:	02/24 10:33 AM
258838	PCS:AA	S	AP, Hays	Delete L.18 - 19:	02/24 04:55 PM

Tab 46	**SB 7068** by **CJ**; (Similar to 1ST ENG/H 7101) Sentencing for Capital Felonies

109706	A	S	AP, Simmons	Delete L.154 - 157:	02/24 08:46 AM
163840	A	S	AP, Simmons	Delete L.1033 - 1036.	02/24 08:46 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Lee, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Thursday, February 25, 2016
TIME: 10:00 a.m.—5:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Lee, Chair; Senator Benacquisto, Vice Chair; Senators Altman, Flores, Gaetz, Galvano, Garcia, Grimsley, Hays, Hukill, Joyner, Latvala, Margolis, Montford, Negron, Richter, Ring, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 152** Grimsley (Similar H 1241, Compare CS/S 946)	Ordering of Medication; Revising the authority of a licensed physician assistant to order medication under the direction of a supervisory physician for a specified patient; authorizing an advanced registered nurse practitioner to order medication for administration to a specified patient; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for a specified patient under certain circumstances, etc. HP 10/20/2015 Favorable AHS 11/18/2015 Favorable AP 02/25/2016	
	With subcommittee recommendation – Health and Human Services		
2	**CS/SB 212** Health Policy / Gaetz (Compare H 85)	Ambulatory Surgical Centers; Revising the definition of the term “ambulatory surgical center” or “mobile surgical facility”; requiring, as a condition of licensure and license renewal, that ambulatory surgical centers provide services to specified patients, etc. HP 01/19/2016 Fav/CS AHS 02/11/2016 Favorable AP 02/25/2016	
	With subcommittee recommendation – Health and Human Services		

A proposed committee substitute for the following bill (SB 234) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 234** Gaetz (Similar CS/CS/H 139)	Dental Care; Establishing a joint local and state dental care access account initiative, subject to the availability of funding; authorizing the creation of dental care access accounts; providing criteria for the selection of dentists for participation in the initiative; providing for the establishment of accounts; requiring the Department of Health to implement an electronic benefit transfer system; authorizing the department to transfer state funds remaining in a closed account at a specified time and to return unspent funds from local sources, etc. HP 10/20/2015 Favorable AHS 11/18/2015 Fav/CS AP 02/25/2016	

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 318) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 318** Environmental Preservation and Conservation / Richter (Similar CS/H 191)	Regulation of Oil and Gas Resources; Preempting the regulation of all matters relating to the exploration, development, production, processing, storage, and transportation of oil and gas; requiring that a permit be obtained before the performance of a high-pressure well stimulation; requiring the Division of Water Resource Management to give consideration to and be guided by certain additional criteria when issuing permits, etc. EP 01/13/2016 Fav/CS AGG 01/25/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – General Government

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 356** Hutson (Similar H 387)	Mental or Physical Disabilities; Citing this act as "Carl's Law"; deleting enhanced penalties for crimes evidencing prejudice based on mental or physical disability; deleting the definition of the term “mental or physical disability”; defining the term “mental or physical disability”; creating enhanced penalties for crimes evidencing prejudice based on mental or physical disability, etc. CJ 02/01/2016 Favorable ACJ 02/17/2016 Favorable AP 02/25/2016	

With subcommittee recommendation – Criminal and Civil Justice

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/SB 400** Environmental Preservation and Conservation / Hays (Similar CS/CS/H 561)	Organizational Structure of the Department of Environmental Protection; Requiring the secretary of the Department of Environmental Protection to appoint a general counsel; authorizing the secretary to establish divisions as necessary to accomplish the mission and goals of the department; authorizing offices to be established as necessary to promote the efficient and effective operation of the department, etc. EP 11/18/2015 Fav/CS AGG 01/13/2016 Favorable AP 02/25/2016	
	With subcommittee recommendation – General Government		
7	**CS/SB 432** Education Pre-K - 12 / Hutson (Identical CS/H 189)	Teacher Certification; Providing alternative requirements for earning a professional educator certificate that covers certain grades, etc. ED 12/03/2015 Workshop-Discussed ED 01/20/2016 Fav/CS AED 02/17/2016 Favorable AP 02/25/2016	
	With subcommittee recommendation – Education		
	A proposed committee substitute for the following bill (CS/SB 434) is available:		
8	**CS/SB 434** Education Pre-K - 12 / Garcia (Similar CS/CS/CS/H 287)	Principal Autonomy Pilot Program Initiative; Creating the Principal Autonomy Pilot Program Initiative; providing a procedure for a school district to participate in the pilot program; requiring principals of participating schools and specified personnel to participate in the University of Virginia School Turnaround Program; requiring participating district school boards to allocate a specified percentage of certain funds to participating schools, etc. ED 11/18/2015 Fav/CS AED 01/13/2016 Fav/CS AP 02/25/2016	
	With subcommittee recommendation – Education		
	A proposed committee substitute for the following bill (CS/SB 436) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**CS/SB 436** Criminal Justice / Simpson (Similar CS/CS/H 257)	Terroristic Threats; Providing definitions; providing that a person commits the crime of terroristic threats if he or she threatens to commit a crime of violence under certain circumstances; providing criminal penalties; requiring payment of restitution, etc. CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Fav/CS AP 02/25/2016 With subcommittee recommendation – Criminal and Civil Justice	
10	**SB 442** Flores (Identical H 119)	Educational Facilities; Providing for school district construction flexibility; authorizing exceptions to educational facilities construction requirements under certain circumstances, etc. ED 01/27/2016 Favorable AED 02/17/2016 Favorable AP 02/25/2016 With subcommittee recommendation – Education	
	A proposed committee substitute for the following bill (CS/SB 524) is available:		
11	**CS/SB 524** Higher Education / Gaetz (Compare H 5003, CS/H 7043, S 2502)	State University System Performance-based Incentives; Requiring performance-based metrics to include specified wage thresholds; requiring the Board of Governors to establish minimum performance funding eligibility thresholds; prohibiting a state university that fails to meet the state's threshold from eligibility for a share of the state's investment performance funding, etc. HE 11/17/2015 Fav/CS AED 12/03/2015 Fav/CS AP 02/25/2016 With subcommittee recommendation – Education	
12	**SB 572** Altman (Similar CS/H 325)	Involuntary Examinations Under the Baker Act; Authorizing physician assistants and advanced registered nurse practitioners to execute a certificate that finds that a person appears to meet the criteria for involuntary examination under the Baker Act of persons believed to have mental illness, etc. HP 11/17/2015 Favorable JU 02/16/2016 Favorable AP 02/25/2016	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/SB 718** Transportation / Sobel (Identical H 1105)	Identification Cards; Requiring the Department of Highway Safety and Motor Vehicles to issue an identification card exhibiting a special designation for a person who has a developmental disability under certain circumstances; requiring payment of an additional fee and proof of diagnosis by a licensed physician; requiring the fee to be deposited into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund; requiring the department to develop rules to facilitate the issuance, requirements, and oversight of developmental disability identification cards; providing applicability, etc. TR 12/03/2015 Fav/CS ATD 01/13/2016 Favorable AP 02/25/2016	
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
14	**CS/SB 748** Health Policy / Flores (Similar CS/H 375)	Physician Assistants; Revising circumstances under which a physician assistant may prescribe medication; authorizing a licensed physician assistant to perform certain services as delegated by a supervising physician; deleting provisions related to examination by the Department of Health; requiring a designated supervising physician to maintain a list of supervising physicians at the practice or facility, etc. HP 12/01/2015 Fav/CS AHS 01/13/2016 Favorable AP 02/25/2016	
	With subcommittee recommendation – Health and Human Services		
15	**SB 850** Bradley (Similar H 549)	Offenses Concerning Racketeering and Illegal Debts; Specifying the earliest date that incidents constituting a pattern of racketeering activity may have occurred; authorizing an investigative agency to institute a civil proceeding for forfeiture in a circuit court in certain circumstances; authorizing a court to order the forfeiture of other property of the defendant up to the value of unavailable property in certain circumstances; deleting the definition of “investigative agency” for purposes of provisions relating to civil investigative subpoenas, etc. CJ 02/01/2016 Favorable ACJ 02/11/2016 Not Considered ACJ 02/17/2016 Favorable AP 02/25/2016	
	With subcommittee recommendation – Criminal and Civil Justice		

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

A proposed committee substitute for the following bill (SB 886) is available:

16 **SB 886**
Benacquisto
(Compare CS/CS/CS/H 669, CS/CS/H 7029, CS/CS/S 684, CS/S 830)

Parent and Student Rights; Revising public school educational choice options available to students throughout the state to include CAPE Digital Tool certificates, CAPE industry certifications, and collegiate high school programs; deleting the definition of and provisions relating to the term "controlled open enrollment"; requiring each school district board to establish a classroom teacher transfer process for parents, to approve or deny a transfer request within a certain timeframe, to notify a parent of a denial, and to post an explanation of the transfer process in the student handbook or a similar publication, etc.

ED 01/20/2016 Favorable
AED 01/28/2016 Fav/CS
AP 02/25/2016

With subcommittee recommendation – Education

A proposed committee substitute for the following bill (CS/SB 918) is available:

17 **CS/SB 918**
Health Policy / Richter
(Compare CS/H 941, H 7105, S 1504)

Licensure of Health Care Professionals; Deleting the requirement that applicants making initial application for certain licensure complete certain courses; providing for the issuance of a license to practice under certain conditions to a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required to practice in the military; providing for the issuance of a temporary professional license under certain conditions to the spouse of an active duty member of the Armed Forces of the United States who is a healthcare practitioner in a profession for which licensure in a state or jurisdiction may not be required, etc.

HP 01/11/2016 Fav/CS
AHS 01/21/2016
AHS 01/26/2016 Fav/CS
AP 02/25/2016

With subcommittee recommendation – Health and Human Services

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**SB 944** Richter (Identical H 799)	Out-of-state Fee Waivers for Active Duty Service Members; Requiring state universities, Florida College System institutions, and certain centers to waive out-of-state fees for active duty members of the United States Armed Forces residing or stationed outside of this state; prohibiting tuition and fees charged to such students from exceeding a specified amount, etc. HE 02/08/2016 Favorable AED 02/17/2016 Favorable AP 02/25/2016 With subcommittee recommendation – Education	
19	**CS/SB 970** Banking and Insurance / Richter (Similar CS/CS/H 783)	Unclaimed Property; Requiring unclaimed funds reported in the name of specified campaigns for public office to be deposited with the Chief Financial Officer to the credit of the State School Trust Fund; requiring certain persons claiming entitlement to unclaimed property to file certified copies of specified pleadings with the Department of Financial Services; revising requirements and conditions for contracts to acquire ownership of or entitlement to property, etc. BI 02/09/2016 Fav/CS JU 02/16/2016 Favorable AP 02/25/2016	
20	**CS/SB 984** Higher Education / Legg (Compare CS/H 7019)	Education Access and Affordability; Specifying that the costs of instructional materials are not included in tuition for certain online degree programs; requiring the Board of Governors and the State Board of Education to annually identify strategies to promote college affordability; requiring Florida College System institution and state university boards of trustees to identify wide variances in the costs of, and frequency of changes in the selection of, textbooks and instructional materials for certain courses, etc. HE 01/11/2016 Fav/CS AED 01/28/2016 Favorable AP 02/25/2016 With subcommittee recommendation – Education	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	**CS/SB 986** Banking and Insurance / Simpson (Identical CS/H 613)	Workers' Compensation System Administration; Deleting a required item to be listed on a notice of election to be exempt; requiring that the Department of Financial Services allow an employer who has not previously been issued an order of penalty assessment to receive a specified credit to be applied to the penalty; eliminating the certification requirements when an expert medical advisor is selected by a judge of compensation claims; deleting the requirement that employers notify the department within 24 hours of any injury resulting in death, etc. BI 01/26/2016 Temporarily Postponed BI 02/01/2016 Fav/CS AGG 02/17/2016 Favorable AP 02/25/2016	

With subcommittee recommendation – General Government

A proposed committee substitute for the following bill (CS/SB 1010) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/SB 1010** Agriculture / Montford (Similar CS/CS/H 7007, Compare CS/CS/H 749, CS/S 1310)	Department of Agriculture and Consumer Services; Revising the powers and duties of the Division of Marketing and Development to remove the enforcement provisions relating to the dealers in agricultural products law; revising the duties of the director of the Division of Consumer Services to include enforcement provisions relating to the dealers in agricultural products law; authorizing the Commissioner of Agriculture to create an Office of Agriculture Technology Services; creating the Grove Removal or Vector Elimination (GROVE) Program, etc. AG 01/11/2016 Fav/CS AGG 01/21/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – General Government

A proposed committee substitute for the following bill (CS/SB 1050) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	**CS/SB 1050** Regulated Industries / Brandes (Similar H 1187, Compare CS/CS/H 535, CS/S 704, CS/CS/S 768)	Regulated Professions and Occupations; Deleting a requirement that yacht and ship brokers maintain a separate license for each branch office and related fees; repealing provisions relating to the licensure of athlete agents; excluding the practices of hair wrapping and body wrapping from regulation under the Florida Cosmetology Act; revising the process by which a business organization obtains the requisite license to perform architectural services, etc. RI 02/02/2016 Fav/CS AGG 02/17/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – General Government

A proposed committee substitute for the following bill (CS/SB 1052) is available:

24	**CS/SB 1052** Environmental Preservation and Conservation / Hays (Compare CS/CS/H 589, CS/H 987, CS/H 7005, CS/CS/S 552, CS/S 922)	Environmental Control; Prohibiting water management districts from modifying or reducing consumptive use permit allocations if actual water use is less than permitted water use due to water conservation measures or specified circumstances; requiring the Department of Environmental Protection to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply, etc. EP 01/20/2016 Fav/CS AGG 02/11/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – General Government

25	**SB 1060** Legg (Compare H 1343, H 7017, S 726, CS/S 1670)	Career and Adult Education; Revising the membership requirements for the State Apprenticeship Advisory Council; revising the attributes that characterize apprenticeable occupations; increasing the maximum number of certain CAPE Digital Tool certificates that the Commissioner of Education may recommend be added to the CAPE Industry Certification Funding List, etc. ED 01/20/2016 Favorable AED 01/28/2016 Favorable AP 02/25/2016	

With subcommittee recommendation – Education

A proposed committee substitute for the following bill (SB 1166) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	**SB 1166** Gaetz (Compare S 2502)	Education Funding; Revising the calculation for certain supplemental funds for exceptional student education programs, etc. AED 01/25/2016 Temporarily Postponed AED 01/28/2016 Fav/CS AP 02/25/2016 With subcommittee recommendation – Education	

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

27	**CS/SB 1170** Banking and Insurance / Detert (Compare CS/CS/H 951)	Health Plan Regulatory Administration; Deleting a provision authorizing group insurance plans to impose a certain preexisting condition exclusion; revising a provision specifying that certain sections of the Florida Insurance Code do not apply to a group health insurance policy as that policy relates to specified benefits, under certain circumstances; redefining the term “creditable coverage”, etc. BI 01/26/2016 Fav/CS AHS 02/11/2016 Fav/CS AP 02/25/2016 With subcommittee recommendation – Health and Human Services	
28	**CS/SB 1196** Education Pre-K - 12 / Bean (Identical CS/H 1305)	Emergency Allergy Treatment in Schools; Authorizing a public school and a private school, respectively, to enter into certain arrangements with wholesale distributors or manufacturers for epinephrine auto-injectors, etc. ED 02/02/2016 Fav/CS AED 02/17/2016 Favorable AP 02/25/2016 With subcommittee recommendation – Education	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
29	**CS/SB 1256** Criminal Justice / Brandes (Identical CS/H 1149)	Alternative Sanctioning; Authorizing the chief judge of each judicial circuit, in consultation with specified entities, to establish an alternative sanctioning program; authorizing an offender who allegedly committed a technical violation of supervision to waive participation in or elect to participate in the program, admit to the violation, agree to comply with the recommended sanction, and agree to waive certain rights; authorizing the court to impose the recommended sanction or direct the Department of Corrections to submit a violation report, affidavit, and warrant to the court; specifying that an offender's participation in an alternative sanctioning program is voluntary, etc. CJ 02/01/2016 Fav/CS ACJ 02/11/2016 Not Considered ACJ 02/17/2016 Favorable AP 02/25/2016	

With subcommittee recommendation – Criminal and Civil Justice

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A proposed committee substitute for the following bill (SB 1282) is available:

30	**SB 1282** Dean (Similar H 7013)	Fish and Wildlife Conservation Commission; Revising penalties for violations of commission rules relating to control and management of state game lands; authorizing exceptions to the prohibition on spearfishing; revising penalties for violations related to subagent sales of hunting, fishing, and trapping licenses and permits, etc. EP 01/20/2016 Favorable AGG 02/11/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – General Government

31	**SB 1312** Dean	Protection Zones for Springs; Providing penalties for violations relating to protection zones for springs; directing the Fish and Wildlife Conservation Commission to establish protection zones to prevent harm to springs; requiring the commission to set vessel speed and operation standards for protection zones; requiring the commission to consult with certain other entities under certain circumstances; specifying responsibility for posting and maintaining regulatory markers, etc. EP 01/27/2016 Favorable AGG 02/17/2016 Favorable AP 02/25/2016	

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

With subcommittee recommendation – General Government

A proposed committee substitute for the following bill (SB 1322) is available:

32 **SB 1322**
Latvala
(Identical H 1279)

Juvenile Detention Costs; Revising the annual contributions by certain counties for the costs of detention care for juveniles; requiring the state to pay all costs of detention care for juveniles residing out of state and for certain postdisposition detention care; deleting a requirement that the Department of Revenue and the counties provide certain technical assistance to the Department of Juvenile Justice, etc.

ACJ 02/11/2016 Fav/CS
AP 02/25/2016
RC

With subcommittee recommendation – Criminal and Civil Justice

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33 **CS/SB 1370**
Health Policy / Grimsley
(Identical CS/H 1245)

Medicaid Provider Overpayments; Authorizing the Agency for Health Care Administration to certify that a Medicaid provider is out of business and that overpayments made to a provider cannot be collected under state law; revising the manner in which the Medicaid program verifies a vendor's visits for the delivery of home health services, etc.

HP 02/09/2016 Fav/CS
AHS 02/17/2016 Favorable
AP 02/25/2016

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 1422) is available:

34 **CS/SB 1422**
Banking and Insurance / Simmons
(Similar CS/H 1163, Compare CS/CS/H 1165, Linked CS/CS/S 1416)

Insurer Regulatory Reporting; Requiring an insurer to maintain a risk management framework; requiring certain insurers and insurance groups to conduct an own-risk and solvency assessment; requiring certain insurers and members of an insurance group to prepare and submit a corporate governance annual disclosure, etc.

BI 01/26/2016 Fav/CS
AGG 02/11/2016 Fav/CS
AP 02/25/2016

With subcommittee recommendation – General Government

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
35	**CS/CS/SB 1442** Banking and Insurance / Health Policy / Garcia (Similar CS/CS/CS/H 221, Compare CS/CS/H 1175, S 1496)	Out-of-network Health Insurance Coverage; Requiring hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers to comply with certain provisions as a condition of licensure; providing additional acts that constitute grounds for denial of a license or disciplinary action, to which penalties apply; requiring an insurer that issues a policy including coverage for the services of a preferred provider to post on its website certain information about participating providers and physicians, etc. HP 02/01/2016 Fav/CS BI 02/16/2016 Fav/CS AP 02/25/2016	

A proposed committee substitute for the following bill (SB 1496) is available:

36	**SB 1496** Bradley (Compare CS/CS/CS/H 221, CS/CS/H 1175, CS/CS/S 1442)	Transparency in Health Care; Requiring a facility licensed under ch. 395, F.S., to provide timely and accurate financial information and quality of service measures to certain individuals; requiring a health care practitioner to provide a patient upon his or her request a written, good faith estimate of anticipated charges within a certain timeframe; requiring a health insurer to make available on its website certain methods that a policyholder can use to make estimates of certain costs and charges, etc. HP 01/19/2016 Favorable AHS 01/28/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – Health and Human Services

37	**CS/SB 1508** Community Affairs / Simpson (Similar H 1379, Compare CS/CS/H 7061, CS/CS/S 756)	Airport Zoning; Revising the requirements relating to permits required for obstructions; revising the circumstances under which a political subdivision owning or controlling an airport and another political subdivision adopt, administer, and enforce airport protection zoning regulations or create a joint airport protection zoning board; repealing provisions relating to guidelines regarding land use near airports, etc. TR 02/04/2016 Favorable CA 02/16/2016 Fav/CS AP 02/25/2016	

A proposed committee substitute for the following bill (CS/SB 1528) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
38	**CS/SB 1528** Regulated Industries / Simpson (Similar CS/CS/H 1347)	Illicit Drugs; Providing that class designation is a way to reference scheduled controlled substances; adding, deleting, and revising the list of Schedule I controlled substances; creating a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver any unlawful controlled substance in, on, or near an assisted living facility, etc. RI 01/27/2016 Fav/CS ACJ 02/11/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – Criminal and Civil Justice

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A proposed committee substitute for the following bill (SB 1534) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
39	**SB 1534** Simmons (Similar CS/CS/H 1235)	Housing Assistance; Requiring that the State Office on Homelessness coordinate among certain agencies and providers to produce a statewide consolidated inventory for the state's entire system of homeless programs which incorporates regionally developed plans; directing the office to create a task force to make recommendations regarding the implementation of a statewide Homeless Management Information System (HMIS), subject to certain requirements; providing a Rapid ReHousing methodology; prohibiting a county or an eligible municipality from expending its portion of the local housing distribution to provide ongoing rent subsidies, etc. CA 01/26/2016 Favorable ATD 02/11/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – Transportation, Tourism, and Economic Development

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
40	**CS/SB 1538** Military and Veterans Affairs, Space, and Domestic Security / Evers (Similar CS/H 1219)	Veterans Employment; Requiring each state agency and authorizing other political subdivisions of the state to develop and implement a veterans recruitment plan; requiring specified goals for veterans recruitment plans; requiring the Department of Management Services to collect specified data and to include the data in its annual workforce report and on its website, etc. MS 01/26/2016 Fav/CS AGG 02/11/2016 Favorable AP 02/25/2016	

With subcommittee recommendation – General Government

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

A proposed committee substitute for the following bill (CS/SB 1604) is available:

41 **CS/SB 1604**
Health Policy / Grimsley
(Similar CS/CS/H 1211)

Drugs, Devices, and Cosmetics; Providing, revising, and deleting definitions for purposes of the Florida Drug and Cosmetic Act; revising prohibited acts related to the distribution of prescription drugs; providing for the expiration, renewal, and issuance of certain drug, device, and cosmetic product registrations; revising the definition of "wholesale distribution" for purposes of medical gas requirements, etc.

HP 01/26/2016 Fav/CS
AGG 02/11/2016 Fav/CS
AP 02/25/2016

With subcommittee recommendation – General Government

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42 **CS/CS/SB 1630**
Ethics and Elections / Banking and Insurance / Flores
(Similar H 289, CS/CS/H 931, Compare S 958)

Operations of the Citizens Property Insurance Corporation; Specifying that a consumer representative appointed by the Governor to the Citizens Property Insurance Corporation's board of governors is not prohibited from practicing in a certain profession if required or permitted by law or ordinance; requiring the corporation to maintain and make available specified lists of insurers to its agents of record, etc.

BI 02/01/2016 Fav/CS
EE 02/16/2016 Fav/CS
AP 02/25/2016

A proposed committee substitute for the following bill (SB 1638) is available:

43 **SB 1638**
Lee
(Similar CS/H 1157)

Postsecondary Education for Veterans; Directing the Department of Education to award postsecondary course credit for specified examinations and tests; providing that specified programs and test scores meet certain educator certification requirements, etc.

HE 01/25/2016 Favorable
AED 02/11/2016 Fav/CS
AP 02/25/2016

With subcommittee recommendation – Education

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
44	**CS/SB 1686** Health Policy / Bean / Joyner (Similar H 1353, Compare CS/CS/H 7087)	Telehealth; Creating the Telehealth Task Force within the Agency for Health Care Administration; requiring the agency to use existing and available resources to administer and support the task force; excluding telehealth products from the definition of "discount medical plan", etc. HP 01/26/2016 Fav/CS AHS 02/11/2016 Favorable AP 02/25/2016	

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 1714) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
45	**CS/SB 1714** Education Pre-K - 12 / Brandes (Similar CS/CS/H 1365)	Competency-based Innovation Pilot Program; Establishing a competency-based innovation pilot program within the Department of Education; authorizing certain schools to apply to the department for approval of a competency-based innovation pilot program; providing for expiration of the pilot program, etc. ED 01/20/2016 Fav/CS AED 02/17/2016 Fav/CS AP 02/25/2016	

With subcommittee recommendation – Education

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
46	**SB 7068** Criminal Justice (Similar H 7101, Compare H 157, S 330)	Sentencing for Capital Felonies; Requiring the prosecutor to give notice to the defendant and to file the notice with the court within a certain timeframe if the prosecutor intends to seek the death penalty; requiring juries to determine the existence of aggravating factors, if any, in the penalty phase of capital cases; requiring the court to enter an order meeting specified requirements in each case in which it imposes a death sentence, etc. AP 02/25/2016	

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 152
INTRODUCER:	Senator Grimsley
SUBJECT:	Ordering of Medication
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 152 provides express authority for an advanced registered nurse practitioner to order *any* medication for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility within the framework of an established protocol. The bill provides express authority in chapter 893, Florida Statutes, the Florida Comprehensive Drug Abuse Prevention and Control Act, for a supervisory physician to authorize a physician assistant or an advanced registered nurse practitioner to order controlled substances for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility.

The bill has an indeterminate fiscal impact. See Section V.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Regulation of Physician Assistants in Florida

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of medicine by the Board of Medicine. Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine. Physician assistants (PAs) are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.[1]

[1] The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (*See* ss. 458.347(9) and 459.022(9), F.S.)

Physician assistants are trained and required by statute to work under the supervision and control of medical physicians or osteopathic physicians.[2] The Board of Medicine and the Board of Osteopathic Medicine have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[3] and indirect[4] supervision.

A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.[5] Each physician or group of physicians supervising a licensed PA must be qualified in the medical areas in which the PA is to perform and must be individually or collectively responsible and liable for the performance and the acts and omissions of the PA.[6]

Current law allows a supervisory physician to delegate to a licensed PA the authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.[7] However, Florida law does allow a supervisory physician to delegate authority to a PA to order any medication, including controlled substances, general anesthetics, and radiographic contrast materials, for a patient of the physician during the patient's stay in a facility licensed under ch. 395, F.S.[8]

Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health and are regulated by the Board of Nursing.[9]

An advanced registered nurse practitioner (ARNP) is a licensed nurse who is certified in advanced or specialized nursing.[10] Florida recognizes three types of ARNP: nurse practitioner

[2] Sections 458.347(4) and 459.022(4), F.S.
[3] "Direct supervision" requires the physician to be on the premises and immediately available. (*See* Fla. Admin. Code R. 64B8-30.001(4) and 64B15-6.001(4).
[4] "Indirect supervision" refers to the easy availability of the supervising physician to the physician assistant, which includes the ability to communicate by telecommunications, and requires the physician to be within reasonable physical proximity. (*See* Fla. Admin. Code R. 64B8-30.001(5) and 64B15-6.001(5).
[5] Fla. Admin. Code R. 64B8-30.012(2) and 64B15-6.010(2).
[6] Sections 458.347(3) and 459.022(3), F.S.
[7] Sections 458.347(4)(e) and (f)1 and 459.022(4)(e), F.S.
[8] *See* s. 395.002(16), F.S. The facilities licensed under ch. 395, F.S., are hospitals, ambulatory surgical centers, and mobile surgical facilities.
[9] The Board of Nursing is composed of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. (*See* s. 464.004(2), F.S.)
[10] "Advanced or specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the Board of Nursing which, by virtue of post-basic specialized education, training and experience, are appropriately performed by an advanced registered nurse practitioner. (*See* s. 464.003(2), F.S.)

(NP), certified registered nurse anesthetist (CRNA), and certified nurse midwife (CNM).[11] To be certified as an ARNP, a nurse must hold a current license as a registered nurse[12] and submit proof to the Board of Nursing that he or she meets one of the following requirements:[13]

- Satisfactory completion of a formal post-basic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;[14] or
- Graduation from a master's degree program in a nursing clinical specialty area with preparation in specialized practitioner skills.

Advanced or specialized nursing acts may only be performed under protocol of a supervising physician or dentist.[15] Within the established framework of the protocol, an ARNP may:[16]

- Monitor and alter drug therapies;
- Initiate appropriate therapies for certain conditions; and
- Order diagnostic tests and physical and occupational therapy.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and NP).[17]

Advanced registered nurse practitioners must meet financial responsibility requirements, as determined by rule of the Board of Nursing, and the practitioner profiling requirements.[18] The Board of Nursing requires professional liability coverage of at least $100,000 per claim with a minimum annual aggregate of at least $300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.[19]

Florida law does not authorize ARNPs to prescribe controlled substances.[20] However, s. 464.012(4)(a), F.S., provides express authority for a CRNA to order certain controlled substances "to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed."

[11] Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from advanced registered nurse practitioners. (*See* ss. 464.003(7) and 464.0115, F.S.)
[12] Practice of professional nursing. (See s. 464.003(20), F.S.)
[13] Section 464.012(1), F.S.
[14] Specialty boards expressly recognized by the Board of Nursing include: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (*See* Fla. Admin. Code R. 64B9-4.002(2)).
[15] Section 464.003(2), F.S.
[16] Section 464.012(3), F.S.
[17] Section 464.012(4), F.S.
[18] Sections 456.0391 and 456.041, F.S.
[19] Fla. Admin. Code R. 64B9-4.002(5).
[20] Sections 893.02(21) and 893.05(1), F.S.

Definitions related to the Ordering of Medicinal Drugs

Chapter 464, F.S., does not contain a definition of the terms "order" or "prescribe." Chapter 465, F.S., relating to pharmacy, defines "prescription" as "any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.[21] "Dispense" is defined as "the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent."[22] "Administration" is defined as "the obtaining and giving of a single dose of medicinal drugs by a legally authorized person to a patient for her or his consumption."[23] Chapter 893, F.S., relating to drug abuse prevention and control, contains similar definitions.[24]

ARNP Petition for Declaratory Statement

On January 22, 2014, a petition for declaratory statement[25] was filed with the Board of Nursing which asked, "Can ARNPs legally order narcotics for patients we treat in the institution with written protocols from our attending Doctors [sic]?"[26] The petition noted that prior to January 1, 2014, ARNPs ordered controlled substances for patients. Effective January 1, 2014, the hospital disallowed the practice and required all ARNPs to get an order from a physician. The hospital cited passage of legislation in 2013 which clarified the authority of physician assistants to order controlled substances but did not address the authority of ARNPs.[27] The Board of Nursing dismissed the petition, finding that it failed to comply with the requirements of chapter 120 and that it sought an opinion regarding the scope of practice of a category of licensees based on an employer's policies.

Drug Enforcement Agency Registration

An individual practitioner[28] who is an agent or employee of another practitioner (other than a mid-level practitioner)[29] registered to dispense controlled substances, may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of a prescription) controlled substances if and to the extent authorized by state law, under the registration of the employer or principal practitioner in lieu of being registered himself or herself.[30]

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[21] Section 465.003(14), F.S.
[22] Section 465.003(6), F.S.
[23] Section 465.003(1), F.S.
[24] See ss. 893.02(1), 893.02(7), and 893.02(22), F.S.
[25] A declaratory statement is an agency's opinion regarding the applicability of a statutory provision, rule, or agency order to a petitioner's set of circumstances. (*See* s. 120.565(1), F.S.)
[26] Petition for Declaratory Statement filed by Carolann Robley ARNP, MSN, BC, FNP (on file with the Senate Committee on Health Policy).
[27] *See* ch. 2013-127, Laws of Fla.
[28] "Practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States of the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research. See 21 U.S.C. s. 802(21) (2011).
[29] Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants.
[30] 21 C.F.R. 1301.22.

Health care practitioners who are agents or employees of a hospital or other institution, may, when acting in the usual course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in which he or she is employed, in lieu of individual registration, provided that:

- The dispensing, administering, or prescribing is in the usual course of professional practice;
- The practitioner is authorized to do so by the state in which he or she practices;
- The hospital or other institution has verified that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner acts only within the scope of employment in the hospital or other institution;
- The hospital or other institution authorizes the practitioner to administer, dispense, or prescribe under its registration and assigns a specific internal code number for each practitioner; and
- The hospital or other institution maintains a current list of internal codes and the corresponding practitioner.[31]

III. Effect of Proposed Changes:

This bill expressly authorizes an advanced registered nurse practitioner (ARNP) to order any medication, including a controlled substance, for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility within the framework of an established protocol. This authority is comparable to the express authority previously granted by the Legislature to physician assistants (PAs).

The bill also provides express authority in ch. 893, F.S., for a supervisory physician to authorize a PA or ARNP to order controlled substances for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility.

The bill conforms ss. 458.347(4)(g) and 459.022(4)(f), F.S., relating to the authority of a PA to order medications, to changes made elsewhere in the act, but does not alter the authority of supervisory physicians or PAs.

The bill clarifies the distinction between a prescription and an order for administration by amending the definition of "prescription" in ch. 465 and ch. 893, F.S., to exclude an order that is dispensed for administration and making conforming changes in s. 893.04, F.S. The bill also revises the definition of "administer" in ch. 893, F.S., to include the term "administration."

The bill reenacts various sections of Florida law as required to incorporate amendments made in the act.

The bill takes effect July 1, 2016.

[31] *Id.*; *See also* U.S. Department of Justice, Drug Enforcement Administration, *Practitioner's Manual*, 27 (2006), *available at:* http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf (last visited Sept. 17, 2015).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SB 152, physicians who use advanced registered nurse practitioners to serve hospitalized patients, physicians who supervise ARNPs with a hospital practice, and hospitals that employ ARNPs may see increased efficiencies if ARNPs can order controlled substances directly under a supervisory protocol without the need for obtaining a physician's order. These efficiencies include time savings for the practitioners and ARNPs and better utilization of potentially limited space, such as emergency room beds where patients might otherwise wait while a supervising physician is located.

C. Government Sector Impact:

The impact described in Section V. B., above, would also apply to public hospitals and physicians employed in public hospitals.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.347, 459.022, 464.012, 465.003, 893.02, 893.04, and 893.05.

This bill reenacts the following sections of the Florida Statutes: 400.462, 401.445, 409.906, 766.103, 409.9201, 458.331, 459.015, 465.014, 465.015, 465.016, 465.022, 465.023, 465.1901, 499.003, 831.30, 112.0455, 381.986, 440.102, 499.0121, 768.36, 810.02, 812.014, 856.015, 944.47, 951.22, 985.711, 1003.57, 1006.09, and 893.0551.

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.

556062

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 381.887, Florida Statutes, is amended to read:

381.887 Emergency treatment for suspected opioid overdose.—

(3) An authorized health care practitioner may, directly or by a non-patient specific standing order, prescribe and dispense an emergency opioid antagonist to a patient or caregiver for use

556062

in accordance with this section, and pharmacists may dispense an emergency opioid antagonist pursuant to such a prescription that ~~issued in the name of the patient or caregiver, which~~ is appropriately labeled with instructions for use. Such patient or caregiver is authorized to store and possess approved emergency opioid antagonists and, in an emergency situation when a physician is not immediately available, administer the emergency opioid antagonist to a person believed in good faith to be experiencing an opioid overdose, regardless of whether that person has a prescription for an emergency opioid antagonist.

Section 2. Paragraph (g) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(g) A supervisory physician may delegate to a licensed physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his or her care~~ in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 or part II of chapter 400 may order any medication under the direction of the supervisory physician.

Section 3. Paragraph (f) of subsection (4) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—


556062

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(f) A supervisory physician may delegate to a licensed physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his or her care~~ in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 or part II of chapter 400 may order any medication under the direction of the supervisory physician.

Section 4. Paragraph (a) of subsection (3) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol that is filed with the board upon biennial license renewal and within 30 days after entering into a supervisory relationship with a physician or changes to the protocol. The board shall review the protocol to ensure compliance with applicable regulatory standards for protocols. The board shall refer to the department licensees submitting protocols that are not compliant with the regulatory standards for protocols. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the

556062

established framework, an advanced registered nurse practitioner may:

(a) Monitor and alter drug therapies and order any medication for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400.

Section 5. Subsection (14) of section 465.003, Florida Statutes, is amended to read:

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

(14) "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a ~~duly~~ licensed practitioner authorized by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist, except for an order that is dispensed for administration. The term also includes an orally transmitted order by the lawfully designated agent of such practitioner;~~. The term also includes~~ an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness; and~~. The term "prescription" also includes~~ a pharmacist's order for a product selected from the formulary created pursuant to s. 465.186. Prescriptions may be retained in written form or the pharmacist may cause them to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

Section 6. Subsections (1) and (22) of section 893.02, Florida Statutes, are amended to read:

556062

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Administer" or "administration" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(22) "Prescription" ~~means and~~ includes any ~~an~~ order for drugs or medicinal supplies which is written~~, signed,~~ or transmitted by any ~~word of mouth, telephone, telegram, or other~~ means of communication by a ~~duly~~ licensed practitioner authorized ~~licensed~~ by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies, is issued in good faith and in the course of professional practice, is intended to be ~~filled, compounded, or~~ dispensed by a ~~another~~ person authorized ~~licensed~~ by the laws of this ~~the~~ state to do so, and meets ~~meeting~~ the requirements of s. 893.04.

(a) The term also includes an order for drugs or medicinal supplies ~~so~~ transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies ~~so~~ ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness.

(b) The term does not include an order that is dispensed for administration by a licensed practitioner authorized by the

556062

laws of this state to administer such drugs or medicinal supplies.

(c) ~~However,~~ If the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of the ~~said~~ prescription.

(d) A prescription ~~order~~ for a controlled substance may ~~shall~~ not be issued on the same prescription blank with another prescription ~~order~~ for a controlled substance that ~~which~~ is named or described in a different schedule or with another~~, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a~~ prescription ~~order~~ for a medicinal drug, as defined in s. 465.003(8), that is ~~which does~~ not ~~fall within the definition of~~ a controlled substance ~~as defined in this act~~.

Section 7. Paragraphs (a), (d), and (f) of subsection (2) of section 893.04, Florida Statutes, are amended to read:

893.04 Pharmacist and practitioner.—

(2)(a) A pharmacist may not dispense a controlled substance listed in Schedule II, Schedule III, or Schedule IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the prescription ~~order~~ is valid. The pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent.

(d) Each ~~written~~ prescription written ~~prescribed~~ by a practitioner in this state for a controlled substance listed in

556062

Schedule II, Schedule III, or Schedule IV must include ~~both~~ a written and a numerical notation of the quantity of the controlled substance prescribed and a notation of the date in numerical, month/day/year format, or with the abbreviated month written out, or the month written out in whole. A pharmacist may, upon verification by the prescriber, document any information required by this paragraph. If the prescriber is not available to verify a prescription, the pharmacist may dispense the controlled substance, but may insist that the person to whom the controlled substance is dispensed provide valid photographic identification. If a prescription includes a numerical notation of the quantity of the controlled substance or date, but does not include the quantity or date written out in textual format, the pharmacist may dispense the controlled substance without verification by the prescriber of the quantity or date if the pharmacy previously dispensed another prescription for the person to whom the prescription was written.

(f) A pharmacist may not knowingly dispense ~~fill~~ a prescription that has been forged for a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

Section 8. Subsection (1) of section 893.05, Florida Statutes, is amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1)(a) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the controlled substance ~~same~~ to be administered by a licensed nurse or an

intern practitioner under his or her direction and supervision only.

(b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s. 464.012(3), as applicable, a practitioner who supervises a licensed physician assistant or advanced registered nurse practitioner may authorize the licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400.

(c) A veterinarian may ~~so~~ prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause the controlled substance ~~it~~ to be administered by an assistant or orderly only under the veterinarian's direction and supervision ~~only~~.

(d) A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 9. Subsection (26) of s. 400.462, subsection (1) of s. 401.445, subsection (18) of s. 409.906, and subsection (3) of s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to ss. 458.347 and 459.022, Florida Statutes, in references thereto.

Section 10. Subsection (1) of s. 401.445 and subsection (3) of s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 464.012, Florida Statutes, in references thereto.

Section 11. Paragraph (a) of subsection (1) of s. 409.9201, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (1) of s. 465.014,

556062

paragraph (c) of subsection (2) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, s. 465.1901, subsection (43) of s. 499.003, and subsection (1) of s. 831.30, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 465.003, Florida Statutes, in references thereto.

Section 12. Paragraph (i) of subsection (5) of s. 112.0455, paragraph (b) of subsection (7) of s. 381.986, paragraph (l) of subsection (1) of s. 440.102, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (3) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, subsection (14) of s. 499.0121, paragraph (b) of subsection (1) of s. 768.36, paragraph (f) of subsection (3) of s. 810.02, paragraph (c) of subsection (2) of s. 812.014, paragraph (c) of subsection (1) of s. 856.015, paragraph (a) of subsection (1) of s. 944.47, subsection (1) of s. 951.22, paragraph (a) of subsection (1) of s. 985.711, paragraph (i) of subsection (1) of s. 1003.57, and subsection (8) of s. 1006.09, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 893.02, Florida Statutes, in references thereto.

Section 13. Paragraph (e) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to s. 893.04, Florida Statutes, in a reference thereto.

Section 14. Paragraph (d) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating

556062

the amendments made by this act to s. 893.05, Florida Statutes, in a reference thereto.

Section 15. This act shall take effect July 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 the ordering of medication; amending s. 381.887, F.S.; clarifying the provision that authorizes a health care practitioner to prescribe and dispense an emergency opioid antagonist; deleting a requirement that certain prescriptions be issued in the name of the patient or caregiver; amending ss. 458.347 and 459.022, F.S.; revising the authority of a licensed physician assistant to order medication under the direction of a supervisory physician for a specified patient; authorizing a supervisory physician to delegate to a licensed physician assistant the authority to order medications for a patient at a licensed nursing home facility; amending s. 464.012, F.S.; authorizing an advanced registered nurse practitioner to order medication for administration to patients in specialized facilities; amending s. 465.003, F.S.; revising the term "prescription" to exclude an order for drugs or medicinal supplies dispensed for administration; amending s. 893.02, F.S.; revising the term

556062

"administer" to include the term "administration"; revising the term "prescription" to exclude an order for drugs or medicinal supplies dispensed for administration; amending s. 893.04, F.S.; conforming provisions to changes made by act; amending s. 893.05, F.S.; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to patients in specified facilities under certain circumstances; reenacting ss. 400.462(26), 401.445(1), 409.906(18), and 766.103(3), F.S., to incorporate the amendments made to ss. 458.347 and 459.022, F.S., in references thereto; reenacting ss. 401.445(1) and 766.103(3), F.S., to incorporate the amendment made to s. 464.012, F.S., in references thereto; reenacting ss. 409.9201(1)(a), 458.331(1)(pp), 459.015(1)(rr), 465.014(1), 465.015(2)(c), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 465.1901, 499.003(43), and 831.30(1), F.S., to incorporate the amendment made to s. 465.003, F.S., in references thereto; reenacting ss. 112.0455(5)(i), 381.986(7)(b), 440.102(1)(l), 458.331(1)(pp), 459.015(1)(rr), 465.015(3), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 499.0121(14), 768.36(1)(b), 810.02(3)(f), 812.014(2)(c), 856.015(1)(c), 944.47(1)(a), 951.22(1), 985.711(1)(a), 1003.57(1)(i), and 1006.09(8), F.S., to incorporate the amendment made to s. 893.02, F.S., in references thereto; reenacting s. 893.0551(3)(e),


556062

F.S., to incorporate the amendment made to s. 893.04, F.S., in a reference thereto; reenacting s. 893.0551(3)(d), F.S., to incorporate the amendment made to s. 893.05, F.S., in a reference thereto; providing an effective date.

725966

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Substitute for Amendment (556062) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(g) A supervisory physician may delegate to a licensed


725966

physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his or her care~~ in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 or part II of chapter 400 may order any medication under the direction of the supervisory physician.

Section 2. Paragraph (f) of subsection (4) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(f) A supervisory physician may delegate to a licensed physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his or her care~~ in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 or part II of chapter 400 may order any medication under the direction of the supervisory physician.

Section 3. Paragraph (a) of subsection (3) of section 464.012, Florida Statutes, is amended to read:


725966

464.012 Certification of advanced registered nurse practitioners; fees.—

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol that is filed with the board upon biennial license renewal and within 30 days after entering into a supervisory relationship with a physician or changes to the protocol. The board shall review the protocol to ensure compliance with applicable regulatory standards for protocols. The board shall refer to the department licensees submitting protocols that are not compliant with the regulatory standards for protocols. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced registered nurse practitioner may:

(a) Monitor and alter drug therapies and order any medication for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400.

Section 4. Subsection (14) of section 465.003, Florida Statutes, is amended to read:

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

(14) "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a ~~duly~~ licensed practitioner authorized by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist, except for an order that is dispensed for administration. The term also includes an orally transmitted order by the lawfully designated


725966

agent of such practitioner;~~. The term also includes~~ an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness; and~~. The term "prescription" also includes~~ a pharmacist's order for a product selected from the formulary created pursuant to s. 465.186. Prescriptions may be retained in written form or the pharmacist may cause them to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

Section 5. Subsections (1) and (22) of section 893.02, Florida Statutes, are amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Administer" or "administration" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(22) "Prescription" ~~means and~~ includes any ~~an~~ order for drugs or medicinal supplies which is written~~, signed,~~ or transmitted by any ~~word of mouth, telephone, telegram, or other~~ means of communication by a ~~duly~~ licensed practitioner authorized ~~licensed~~ by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies, is issued in good faith and in the course of professional practice, is intended to be ~~filled, compounded, or~~ dispensed by a ~~another~~ person authorized ~~licensed~~

by the laws of this ~~the~~ state to do so, and meets ~~meeting~~ the requirements of s. 893.04.

(a) The term also includes an order for drugs or medicinal supplies ~~so~~ transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies ~~so~~ ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness.

(b) The term does not include an order that is dispensed for administration by a licensed practitioner authorized by the laws of this state to administer such drugs or medicinal supplies.

(c) ~~However,~~ If the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of the ~~said~~ prescription.

(d) A prescription ~~order~~ for a controlled substance may ~~shall~~ not be issued on the same prescription blank with another prescription ~~order~~ for a controlled substance that ~~which~~ is named or described in a different schedule or with another~~, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a~~ prescription ~~order~~ for a medicinal drug, as defined in s. 465.003(8), that is ~~which does~~ not ~~fall within the definition of~~ a controlled substance ~~as defined in this act~~.

725966

Section 6. Paragraphs (a), (d), and (f) of subsection (2) of section 893.04, Florida Statutes, are amended to read:

893.04 Pharmacist and practitioner.—

(2)(a) A pharmacist may not dispense a controlled substance listed in Schedule II, Schedule III, or Schedule IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the prescription ~~order~~ is valid. The pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent.

(d) Each ~~written~~ prescription written ~~prescribed~~ by a practitioner in this state for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include ~~both~~ a written and a numerical notation of the quantity of the controlled substance prescribed and a notation of the date in numerical, month/day/year format, or with the abbreviated month written out, or the month written out in whole. A pharmacist may, upon verification by the prescriber, document any information required by this paragraph. If the prescriber is not available to verify a prescription, the pharmacist may dispense the controlled substance, but may insist that the person to whom the controlled substance is dispensed provide valid photographic identification. If a prescription includes a numerical notation of the quantity of the controlled substance or date, but does not include the quantity or date written out in textual format, the pharmacist may dispense the controlled substance without verification by the prescriber of the quantity or date if the


725966

pharmacy previously dispensed another prescription for the person to whom the prescription was written.

(f) A pharmacist may not knowingly dispense ~~fill~~ a prescription that has been forged for a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

Section 7. Subsection (1) of section 893.05, Florida Statutes, is amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1)(a) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the controlled substance ~~same~~ to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only.

(b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s. 464.012(3), as applicable, a practitioner who supervises a licensed physician assistant or advanced registered nurse practitioner may authorize the licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400.

(c) A veterinarian may ~~so~~ prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause the controlled substance ~~it~~ to be administered by an assistant or orderly only under the veterinarian's direction and supervision ~~only~~.

(d) A certified optometrist licensed under chapter 463 may

not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 8. Subsection (26) of s. 400.462, subsection (1) of s. 401.445, subsection (18) of s. 409.906, and subsection (3) of s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to ss. 458.347 and 459.022, Florida Statutes, in references thereto.

Section 9. Subsection (1) of s. 401.445 and subsection (3) of s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 464.012, Florida Statutes, in references thereto.

Section 10. Paragraph (a) of subsection (1) of s. 409.9201, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (1) of s. 465.014, paragraph (c) of subsection (2) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, s. 465.1901, subsection (43) of s. 499.003, and subsection (1) of s. 831.30, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 465.003, Florida Statutes, in references thereto.

Section 11. Paragraph (i) of subsection (5) of s. 112.0455, paragraph (b) of subsection (7) of s. 381.986, paragraph (l) of subsection (1) of s. 440.102, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (3) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, subsection (14) of s. 499.0121, paragraph (b) of subsection (1) of s. 768.36,


725966

paragraph (f) of subsection (3) of s. 810.02, paragraph (c) of subsection (2) of s. 812.014, paragraph (c) of subsection (1) of s. 856.015, paragraph (a) of subsection (1) of s. 944.47, subsection (1) of s. 951.22, paragraph (a) of subsection (1) of s. 985.711, paragraph (i) of subsection (1) of s. 1003.57, and subsection (8) of s. 1006.09, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 893.02, Florida Statutes, in references thereto.

Section 12. Paragraph (e) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to s. 893.04, Florida Statutes, in a reference thereto.

Section 13. Paragraph (d) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to s. 893.05, Florida Statutes, in a reference thereto.

Section 14. This act shall take effect July 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 the ordering of medication; amending s. 381.887, F.S.; clarifying the provision that authorizes a health care practitioner to prescribe and dispense an emergency opioid antagonist; deleting a requirement that certain prescriptions be


725966

issued in the name of the patient or caregiver; amending ss. 458.347 and 459.022, F.S.; revising the authority of a licensed physician assistant to order medication under the direction of a supervisory physician for a specified patient; authorizing a supervisory physician to delegate to a licensed physician assistant the authority to order medications for a patient at a licensed nursing home facility; amending s. 464.012, F.S.; authorizing an advanced registered nurse practitioner to order medication for administration to patients in specialized facilities; amending s. 465.003, F.S.; revising the term "prescription" to exclude an order for drugs or medicinal supplies dispensed for administration; amending s. 893.02, F.S.; revising the term "administer" to include the term "administration"; revising the term "prescription" to exclude an order for drugs or medicinal supplies dispensed for administration; amending s. 893.04, F.S.; conforming provisions to changes made by act; amending s. 893.05, F.S.; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to patients in specified facilities under certain circumstances; reenacting ss. 400.462(26), 401.445(1), 409.906(18), and 766.103(3), F.S., to incorporate the amendments made to ss. 458.347 and 459.022, F.S., in references thereto; reenacting ss. 401.445(1) and 766.103(3), F.S., to


725966

incorporate the amendment made to s. 464.012, F.S., in references thereto; reenacting ss. 409.9201(1)(a), 458.331(1)(pp), 459.015(1)(rr), 465.014(1), 465.015(2)(c), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 465.1901, 499.003(43), and 831.30(1), F.S., to incorporate the amendment made to s. 465.003, F.S., in references thereto; reenacting ss. 112.0455(5)(i), 381.986(7)(b), 440.102(1)(l), 458.331(1)(pp), 459.015(1)(rr), 465.015(3), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 499.0121(14), 768.36(1)(b), 810.02(3)(f), 812.014(2)(c), 856.015(1)(c), 944.47(1)(a), 951.22(1), 985.711(1)(a), 1003.57(1)(i), and 1006.09(8), F.S., to incorporate the amendment made to s. 893.02, F.S., in references thereto; reenacting s. 893.0551(3)(e), F.S., to incorporate the amendment made to s. 893.04, F.S., in a reference thereto; reenacting s. 893.0551(3)(d), F.S., to incorporate the amendment made to s. 893.05, F.S., in a reference thereto; providing an effective date.

By Senator Grimsley

21-00029-16 2016152__

A bill to be entitled

An act relating to the ordering of medication; amending ss. 458.347 and 459.022, F.S.; revising the authority of a licensed physician assistant to order medication under the direction of a supervisory physician for a specified patient; amending s. 464.012, F.S.; authorizing an advanced registered nurse practitioner to order medication for administration to a specified patient; amending s. 465.003, F.S.; revising the term "prescription" to exclude an order for drugs or medicinal supplies dispensed for administration; amending s. 893.02, F.S.; revising the term "administer" to include the term "administration"; revising the term "prescription" to exclude an order for drugs or medicinal supplies dispensed for administration; amending s. 893.04, F.S.; conforming provisions to changes made by act; amending s. 893.05, F.S.; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for a specified patient under certain circumstances; reenacting ss. 400.462(26), 401.445(1), 409.906(18), and 766.103(3), F.S., to incorporate the amendments made to ss. 458.347 and 459.022, F.S., in references thereto; reenacting ss. 401.445(1) and 766.103(3), F.S., to incorporate the amendment made to s. 464.012, F.S., in references thereto; reenacting ss. 409.9201(1)(a), 458.331(1)(pp), 459.015(1)(rr),

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465.014(1), 465.015(2)(c), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 465.1901, 499.003(43), and 831.30(1), F.S., to incorporate the amendment made to s. 465.003, F.S., in references thereto; reenacting ss. 112.0455(5)(i), 381.986(7)(b), 440.102(1)(l), 458.331(1)(pp), 459.015(1)(rr), 465.015(3), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 499.0121(14), 768.36(1)(b), 810.02(3)(f), 812.014(2)(c), 856.015(1)(c), 944.47(1)(a), 951.22(1), 985.711(1)(a), 1003.57(1)(i), and 1006.09(8), F.S., to incorporate the amendment made to s. 893.02, F.S., in references thereto; reenacting s. 893.0551(3)(e), F.S., to incorporate the amendment made to s. 893.04, F.S., in a reference thereto; reenacting s. 893.0551(3)(d), F.S., to incorporate the amendment made to s. 893.05, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(g) A supervisory physician may delegate to a licensed physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his~~

~~or her care~~ in a facility licensed under chapter 395~~,~~ ~~notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation~~. ~~For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 may order any medication under the direction of the supervisory physician.~~

Section 2. Paragraph (f) of subsection (4) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(f) A supervisory physician may delegate to a licensed physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his or her care~~ in a facility licensed under chapter 395~~,~~ ~~notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation~~. ~~For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 may order any medication under the direction of the supervisory physician.~~

Section 3. Paragraph (a) of subsection (3) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework

of an established protocol that is filed with the board upon biennial license renewal and within 30 days after entering into a supervisory relationship with a physician or changes to the protocol. The board shall review the protocol to ensure compliance with applicable regulatory standards for protocols. The board shall refer to the department licensees submitting protocols that are not compliant with the regulatory standards for protocols. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced registered nurse practitioner may:

(a) Monitor and alter drug therapies and order any medication for administration to a patient in a facility licensed under chapter 395.

Section 4. Subsection (14) of section 465.003, Florida Statutes, is amended to read:

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

(14) "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a ~~duly~~ licensed practitioner authorized by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist, except for an order that is dispensed for administration. The term also includes an orally transmitted order by the lawfully designated agent of such practitioner;~~. The term also includes~~ an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise

of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness; and. ~~The term "prescription" also includes~~ a pharmacist's order for a product selected from the formulary created pursuant to s. 465.186. Prescriptions may be retained in written form or the pharmacist may cause them to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

Section 5. Subsections (1) and (22) of section 893.02, Florida Statutes, are amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Administer" or "administration" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(22) "Prescription" ~~means and~~ includes any ~~an~~ order for drugs or medicinal supplies which is written~~, signed,~~ or transmitted by any ~~word of mouth, telephone, telegram, or other~~ means of communication by a ~~duly~~ licensed practitioner authorized ~~licensed~~ by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies, is issued in good faith and in the course of professional practice, is intended to be ~~filled, compounded, or~~ dispensed by a ~~another~~ person authorized ~~licensed~~ by the laws of this ~~the~~ state to do so, and meets ~~meeting~~ the requirements of s. 893.04.

(a) The term also includes an order for drugs or medicinal supplies ~~so~~ transmitted or written by a physician, dentist,

veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies ~~so~~ ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness.

(b) The term does not include an order that is dispensed for administration by a licensed practitioner authorized by the laws of this state to administer such drugs or medicinal supplies.

(c) ~~However,~~ If the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of the ~~said~~ prescription.

(d) A prescription ~~order~~ for a controlled substance may ~~shall~~ not be issued on the same prescription blank with another prescription ~~order~~ for a controlled substance that ~~which~~ is named or described in a different schedule or with another~~, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a~~ prescription ~~order~~ for a medicinal drug, as defined in s. 465.003(8), that is ~~which does~~ not ~~fall within the definition of~~ a controlled substance ~~as defined in this act~~.

Section 6. Paragraphs (a), (d), and (f) of subsection (2) of section 893.04, Florida Statutes, are amended to read:

893.04 Pharmacist and practitioner.—

(2)(a) A pharmacist may not dispense a controlled substance

listed in Schedule II, Schedule III, or Schedule IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the prescription ~~order~~ is valid. The pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent.

(d) Each ~~written~~ prescription written ~~prescribed~~ by a practitioner in this state for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include ~~both~~ a written and a numerical notation of the quantity of the controlled substance prescribed and a notation of the date in numerical, month/day/year format, or with the abbreviated month written out, or the month written out in whole. A pharmacist may, upon verification by the prescriber, document any information required by this paragraph. If the prescriber is not available to verify a prescription, the pharmacist may dispense the controlled substance, but may insist that the person to whom the controlled substance is dispensed provide valid photographic identification. If a prescription includes a numerical notation of the quantity of the controlled substance or date, but does not include the quantity or date written out in textual format, the pharmacist may dispense the controlled substance without verification by the prescriber of the quantity or date if the pharmacy previously dispensed another prescription for the person to whom the prescription was written.

(f) A pharmacist may not knowingly dispense ~~fill~~ a prescription that has been forged for a controlled substance

listed in Schedule II, Schedule III, or Schedule IV.

Section 7. Subsection (1) of section 893.05, Florida Statutes, is amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1)(a) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the controlled substance ~~same~~ to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only.

(b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s. 464.012(3), as applicable, a practitioner who supervises a licensed physician assistant or advanced registered nurse practitioner may authorize the licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to a patient in a facility licensed under chapter 395.

(c) A veterinarian may ~~so~~ prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause the controlled substance ~~it~~ to be administered by an assistant or orderly under the veterinarian's direction and supervision only.

(d) A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 8. Subsection (26) of s. 400.462, subsection (1) of s. 401.445, subsection (18) of s. 409.906, and subsection (3) of

s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to ss. 458.347 and 459.022, Florida Statutes, in references thereto.

Section 9. Subsection (1) of s. 401.445 and subsection (3) of s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 464.012, Florida Statutes, in references thereto.

Section 10. Paragraph (a) of subsection (1) of s. 409.9201, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (1) of s. 465.014, paragraph (c) of subsection (2) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, s. 465.1901, subsection (43) of s. 499.003, and subsection (1) of s. 831.30, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 465.003, Florida Statutes, in references thereto.

Section 11. Paragraph (i) of subsection (5) of s. 112.0455, paragraph (b) of subsection (7) of s. 381.986, paragraph (l) of subsection (1) of s. 440.102, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (3) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, subsection (14) of s. 499.0121, paragraph (b) of subsection (1) of s. 768.36, paragraph (f) of subsection (3) of s. 810.02, paragraph (c) of subsection (2) of s. 812.014, paragraph (c) of subsection (1) of s. 856.015, paragraph (a) of subsection (1) of s. 944.47, subsection (1) of s. 951.22, paragraph (a) of subsection (1) of

s. 985.711, paragraph (i) of subsection (1) of s. 1003.57, and subsection (8) of s. 1006.09, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 893.02, Florida Statutes, in references thereto.

Section 12. Paragraph (e) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to s. 893.04, Florida Statutes, in a reference thereto.

Section 13. Paragraph (d) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to s. 893.05, Florida Statutes, in a reference thereto.

Section 14. This act shall take effect July 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 Appropriations

BILL:	CS/SB 212
INTRODUCER:	Health Policy Committee and Senator Gaetz
SUBJECT:	Ambulatory Surgical Centers
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 212 allows patients in an ambulatory surgical center (ASC) to stay in the center for up to 24 hours. Current law requires that patients in an ASC be discharged on the same working day and restricts patients from staying overnight in an ASC.

The bill also requires, as a condition of licensure, that an ASC must provide services to Medicaid and Medicare patients and to patients who qualify for charity care. The bill defines "charity care" as uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

The bill is not estimated to have a fiscal impact on state government.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Ambulatory Surgical Centers

An ASC is a facility, that is not a part of a hospital, with a primary purpose to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight.[1]

In Florida, ambulatory procedures are performed in two settings, hospital-based outpatient facilities and freestanding ASCs. Currently, there are 431 licensed ASCs in Florida.[2] Of these, 413 are Medicare and/or Medicaid certified, and 381 are accredited by either the Accreditation Association for Ambulatory Health Care (AAAHC) or by the Joint Commission.[3] In 2008, Medicare paid for 39.1 percent of all procedures performed in ASCs while Medicaid paid for 5.6 percent and commercial payers paid for 46.6 percent.

Between April 2014 and March 2015, there were 2,933,433 visits to ASCs or hospital outpatient facilities in Florida.[4] Hospital outpatient facilities accounted for 31 percent and free standing ASCs accounted for 59 percent. Freestanding ASC average charges range from $2,930 to $7,333 and hospital outpatient facility average charges range from $7,727 to $26,034 for the same time period.[5] Two of the most popular procedures that are performed on adults at an ASC include cataract procedures with 249,184 performed and colonoscopies with 218,745 performed, also during the same time period.[6]

In a survey of ASC research and literature, the Office of Program Policy Analysis and Government Accountability (OPPAGA) found that, generally, the impact on hospitals from competition from ASCs was limited and that ASCs can result in cost savings when performing certain procedures. Additionally, the OPPAGA did not identify any patterns associated with access to services in ASCs and found that the studies largely agree that ASCs, in general, provide timely service and had low rates of unexpected adverse safety events.[7]

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[1] Section 395.002(3), F.S, defines "Ambulatory surgical center" or "mobile surgical facility" to mean a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003, F.S. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.
[2] See AHCA presentation on Ambulatory Surgical Centers, slide 10, presented to the Health Policy Committee on June 10, 2015, (on file with the Senate Committee on Health Policy).
[3] Id.
[4] Agency for Health Care Administration, Florida Health Finder Search, http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx (last viewed January 14, 2016).
[5] Id.
[6] Id.
[7] Ambulatory Surgical Centers and Recovery Care Centers, OPPAGA, January 19, 2016, on file with Senate Health Policy Committee staff.

ASC Licensure

ASCs are licensed and regulated by the AHCA under the same regulatory framework as hospitals.[8] Applicants for ASC licensure must submit certain information to the AHCA prior to accepting patients for care or treatment, including registration of articles of incorporation and a zoning certificate or proof of compliance with zoning requirements.[9]

Upon receipt of an initial application, the AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including:

- The governing body's bylaws, rules, and regulations;
- The roster of registered nurses and licensed practical nurses with current license numbers;
- A fire plan; and
- A comprehensive emergency management plan.[10]

Rules for ASCs

Pursuant to s. 395.1055, F.S., the AHCA is authorized to adopt rules for hospitals and ASCs. Separate standards may be provided for general and specialty hospitals, ASCs, and statutory rural hospitals, but the rules for all hospitals and ASCs must include minimum standards for ensuring that:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- A licensed facility is established, organized, and operated consistent with established standards and rules; and
- A licensed facility conforms to minimum space, equipment, and furnishing standards for the beds in the facility.

AHCA rule ch. 59A-5, F.A.C., implements the minimum standards for ASCs. Those rules also require policies and procedures to ensure the protection of patient rights.

Staff and Personnel Rules

ASCs are required to have written policies and procedures for surgical services, anesthesia services, nursing services, pharmaceutical services, laboratory services, and radiologic services. In providing these services, ACSs are required to have certain professional staff available, including:

- A qualified person responsible for the daily functioning and maintenance of the surgical suite;
- An anesthesiologist, physician, a certified registered nurse anesthetist under the on-site medical direction of a licensed physician, or an anesthesiologist assistant under the direct

[8] Sections 395.001-395.1065, F.S., and Part II, Chapter 408, F.S.
[9] Rule 59A-5.003(4), F.A.C.
[10] Rule 59A-5.003(5), F.A.C.

supervision of an anesthesiologist who must be in the ASC during the anesthesia and post-anesthesia recovery period until all patients are alert or discharged;
- A registered professional nurse who is responsible for coordinating and supervising all nursing services;
- A registered professional circulating nurse for a patient during that patient's surgical procedure; and
- A registered professional nurse who must be in the recovery area at all times when any patients are present.[11]

Infection Control Rules

ASCs are required to establish an infection control program involving members of the medical, nursing, and administrative staff. The program must include written policies and procedures reflecting the scope of the infection control program. The written policies and procedures must be reviewed at least every two years by the infection control program members. The infection control program must include:
- Surveillance, prevention, and control of infection among patients and personnel;
- A system for identifying, reporting, evaluating and maintaining records of infections;
- Ongoing review and evaluation of aseptic, isolation, and sanitation techniques employed by the ASC; and
- Development and coordination of training programs in infection control for all personnel.[12]

Emergency Management Plan Rules

ASCs are required to develop and adopt a written comprehensive emergency management plan for emergency care during an internal or external disaster or emergency. The ASC must review the plan and update it annually.[13]

Accreditation

ASCs may seek voluntary accreditation by the Joint Commission or the AAAHC. The AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs. The AHCA is authorized to accept survey reports of accredited ASCs from accrediting organizations if the standards included in the survey report are determined to document that the ASC is in substantial compliance with state licensure requirements. The AHCA is required to conduct annual validation inspections on a minimum of five percent of the ASCs which were inspected by an accreditation organization.[14]

AHCA is required to conduct annual life safety inspections of all ASCs to ensure compliance with life safety codes and disaster preparedness requirements. However, the life-safety inspection may be waived if an accreditation inspection was conducted on an ASC by a certified life safety inspector and the ASC was found to be in compliance with the life safety requirements.[15]

[11] Rule 59A-5.0085, F.A.C.
[12] Rule 59A-5.011, F.A.C.
[13] Rule 59A-5.018, F.A.C.
[14] Rule 59A-5.004, F.A.C.
[15] Id.

Medicare Requirements

ASCs are required to have an agreement with the federal Centers for Medicare & Medicaid Services (CMS) in order to participate in Medicare. ASCs are also required to comply with specific conditions for coverage. The CMS defines "ASC" as any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission.[16]

The CMS may deem an ASC to be in compliance with all of the conditions for coverage if the ASC is accredited by a national accrediting body, or licensed by a state agency, and the CMS determines that such accreditation or licensure provides reasonable assurance that the conditions for coverage are met.[17] All of the CMS conditions for coverage requirements are specifically required in AHCA rule ch. 59A-5, F.A.C., and apply to all ASCs in Florida. The conditions for coverage require ASCs to have:

- A governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC's total operation;
- A quality assessment and performance improvement program;
- A transfer agreement with one or more acute care general hospitals, which will admit any patient referred who requires continuing care;
- A disaster preparedness plan;
- An organized medical staff;
- A fire control plan;
- A sanitary environment;
- An infection control program; and
- A procedure for patient admission, assessment, and discharge.

III. Effect of Proposed Changes:

The bill amends the definition of "ambulatory surgical center" in s. 395.002, F.S., to allow a patient to be admitted and discharged from an ASC within 24 hours. Current law requires that patients be discharged from an ASC within the same working day and restricts patients from staying at an ASC overnight.

The bill also amends s. 395.003, F.S., to require, as a condition of licensure, that ASCs provide services to Medicaid and Medicare patients and to patients who qualify for charity care. The bill defines "charity care" as uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

The bill also includes conforming changes for statutory cross-references.

The bill establishes an effective date of July 1, 2016.

[16] 42 C.F.R. §416.2
[17] 42 C.F.R. §416.26(a)(1)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 212 may have an indeterminate positive fiscal impact on patients in Florida who are able to have a surgical procedure performed in an ASC if the costs are less in these settings than in a hospital.

The bill may have an indeterminate negative fiscal impact on hospitals if more patients choose to have their procedures performed in an ASC rather than in a hospital.

The bill may have a negative fiscal impact on ASCs that are required to provide services to Medicare and Medicaid patients as well as patients who qualify for charity care if the ASCs do not currently provide such services.

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: 395.002 and 395.003.

IX. Additional Information:

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

CS by Health Policy on January 19, 2016:
The CS amends SB 212 to remove all provisions of the bill except a change to the definition of "ambulatory surgical center" which allows patients to recover in an ASC for 24 hours, rather than requiring that patients be released on the same business day. The CS also requires that ASCs provide services to Medicaid and Medicare patients as well as patients who qualify for charity care. The CS defines "charity care" as uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

B. Amendments:

None.

317634

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 381.4019, Florida Statutes, is created to read:

381.4019 Dental care access accounts.—Subject to the availability of funds, the Legislature establishes a joint local and state dental care access account initiative and authorizes the creation of dental care access accounts to promote economic

317634

development by supporting qualified dentists who practice in dental health professional shortage areas or medically underserved areas or who treat a medically underserved population. The Legislature recognizes that maintaining good oral health is integral to overall health status and that the good health of residents of this state is an important contributing factor in economic development. Better health, including better oral health, enables workers to be more productive, reduces the burden of health care costs, and enables children to improve in cognitive development.

(1) As used in this section, the term:

(a) "Dental health professional shortage area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(b) "Department" means the Department of Health.

(c) "Medically underserved area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(d) "Public health program" means a county health department, the Children's Medical Services Network, a federally qualified community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program as designated by the department.

(2) The department shall develop and implement a dental care access account initiative to benefit dentists licensed to practice in this state who demonstrate, as required by the department by rule:

(a) Active employment by a public health program located in

317634

a dental health professional shortage area or a medically underserved area; or

(b) A commitment to opening a private practice in a dental health professional shortage area or a medically underserved area, as demonstrated by the dentist residing in the designated area, maintaining an active Medicaid provider agreement, enrolling in one or more Medicaid managed care plans, expending sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients, and obtaining financial support from the local community in which the dentist is practicing or intending to open a practice.

(3) The department shall establish dental care access accounts as individual benefit accounts for each dentist who satisfies the requirements of subsection (2) and is selected by the department for participation. The department shall implement an electronic benefit transfer system that enables each dentist to spend funds from his or her account for the purposes described in subsection (4).

(4) Funds contributed from state and local sources to a dental care access account may be used for one or more of the following purposes:

(a) Repayment of dental school student loans.

(b) Investment in property, facilities, or equipment necessary to establish and operate a dental office consisting of no fewer than two operatories.

(c) Payment of transitional expenses related to the relocation or opening of a dental practice which are specifically approved by the department.

317634

(5) Subject to legislative appropriation, the department shall distribute state funds as an award to each dental care access account. An individual award must be in an amount not more than $100,000 and not less than $10,000, except that a state award may not exceed 3 times the amount contributed to an account in the same year from local sources. If a dentist qualifies for a dental care access account under paragraph (2)(a), the dentist's salary and associated employer expenditures constitute a local match and qualify the account for a state award if the salary and associated expenditures do not come from state funds. State funds may not be included in a determination of the amount contributed to an account from local sources.

(6) The department may accept contributions of funds from a local source for deposit in the account of a dentist designated by the donor.

(7) The department shall close an account no later than 5 years after the first deposit of state or local funds into that account or immediately upon the occurrence of any of the following:

(a) Termination of the dentist's employment with a public health program, unless, within 30 days after such termination, the dentist opens a private practice in a dental health professional shortage area or medically underserved area.

(b) Termination of the dentist's practice in a designated dental health professional shortage area or medically underserved area.

(c) Termination of the dentist's participation in the Florida Medicaid program.

317634

(d) Participation by the dentist in any fraudulent activity.

(8) Any state funds remaining in a closed account may be awarded and transferred to another account concurrent with the distribution of funds under the next legislative appropriation for the initiative. The department shall return to the donor on a pro rata basis unspent funds from local sources which remain in a closed account.

(9) If the department determines that a dentist has withdrawn account funds after the occurrence of an event specified in subsection (7), has used funds for purposes not authorized in subsection (4), or has not remained eligible for a dental care access account for a minimum of 2 years, the dentist shall repay the funds to his or her account. The department may recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

(10) The department shall establish by rule:

(a) Application procedures for dentists who wish to apply for a dental care access account. An applicant may demonstrate that he or she has expended sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients by documenting contracts for the purchase or lease of a practice location and providing executed obligations for the purchase or other acquisition of at least 30 percent of the value of equipment or supplies necessary to operate a dental practice. The department may limit the number of applicants selected and shall give priority to those applicants practicing in the areas receiving higher rankings pursuant to subsection (11). The department may

317634

establish additional criteria for selection which recognize an applicant's active engagement with and commitment to the community providing a local match.

(b) A process to verify that funds withdrawn from a dental care access account have been used solely for the purposes described in subsection (4).

(11) The Department of Economic Opportunity shall rank the dental health professional shortage areas and medically underserved areas of the state based on the extent to which limited access to dental care is impeding the areas' economic development, with a higher ranking indicating a greater impediment to development.

(12) The department shall develop a marketing plan for the dental care access account initiative in cooperation with the University of Florida College of Dentistry, the Nova Southeastern University College of Dental Medicine, the Lake Erie College of Osteopathic Medicine School of Dental Medicine, and the Florida Dental Association.

(13)(a) By January 1 of each year, beginning in 2018, the department shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include:

1. The number of patients served by dentists receiving funding under this section.

2. The number of Medicaid recipients served by dentists receiving funding under this section.

3. The average number of hours worked and patients served in a week by dentists receiving funding under this section.

4. The number of dentists in each dental health

317634

professional shortage area or medically underserved area receiving funding under this section.

5. The amount and source of local matching funds received by the department.

6. The amount of state funds awarded to dentists under this section.

7. A complete accounting of the use of funds by categories identified by the department, including, but not limited to, loans, supplies, equipment, rental property payments, real property purchases, and salary and wages.

(b) The department shall adopt rules to require dentists to report information to the department which is necessary for the department to fulfill its reporting requirement under this subsection.

Section 2. Subsection (3) of section 395.002, Florida Statutes, is amended to read:

395.002 Definitions.—As used in this chapter:

(3) "Ambulatory surgical center" or "mobile surgical facility" means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within 24 hours ~~the same working day and is not permitted to stay overnight~~, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an

317634

ambulatory surgical center pursuant to s. 395.003. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.

Section 3. Present subsections (6) through (10) of section 395.003, Florida Statutes, are redesignated as subsections (7) through (11), respectively, a new subsection (6) is added to that section, and present subsections (9) and (10) of that section are amended, to read:

395.003 Licensure; denial, suspension, and revocation.—

(6) An ambulatory surgical center, as a condition of initial licensure and license renewal, must provide services to Medicare patients, Medicaid patients, and patients who qualify for charity care in an amount equal to or greater than the applicable district average among licensed providers of similar services. For the purposes of this subsection, "charity care" means uncompensated care delivered to uninsured patients with incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

(10) ~~(9)~~ A hospital licensed as of June 1, 2004, shall be exempt from subsection (9) ~~subsection (8)~~ as long as the hospital maintains the same ownership, facility street address, and range of services that were in existence on June 1, 2004. Any transfer of beds, or other agreements that result in the establishment of a hospital or hospital services within the intent of this section, shall be subject to subsection (9)

317634

~~subsection (8)~~. Unless the hospital is otherwise exempt under subsection (9) ~~subsection (8)~~, the agency shall deny or revoke the license of a hospital that violates any of the criteria set forth in that subsection.

(11) ~~(10)~~ The agency may adopt rules implementing the licensure requirements set forth in subsection (9) ~~subsection (8)~~. Within 14 days after rendering its decision on a license application or revocation, the agency shall publish its proposed decision in the Florida Administrative Register. Within 21 days after publication of the agency's decision, any authorized person may file a request for an administrative hearing. In administrative proceedings challenging the approval, denial, or revocation of a license pursuant to subsection (9) ~~subsection (8)~~, the hearing must be based on the facts and law existing at the time of the agency's proposed agency action. Existing hospitals may initiate or intervene in an administrative hearing to approve, deny, or revoke licensure under subsection (9) ~~subsection (8)~~ based upon a showing that an established program will be substantially affected by the issuance or renewal of a license to a hospital within the same district or service area.

Section 4. Section 624.27, Florida Statutes, is created to read:

624.27 Application of code as to direct primary care agreements.—

(1) As used in this section, the term:

(a) "Direct primary care agreement" means a contract between a primary care provider and a patient, the patient's legal representative, or an employer which meets the requirements specified under subsection (4) and does not

317634

indemnify for services provided by a third party.

(b) "Primary care provider" means a health care practitioner licensed under chapter 458, chapter 459, chapter 460, or chapter 464, or a primary care group practice that provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A direct primary care agreement does not constitute insurance and is not subject to chapter 636 or any other chapter of the Florida Insurance Code. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to chapter 636 or any other chapter of the Florida Insurance Code.

(3) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under chapter 636 or any other chapter of the Florida Insurance Code to market, sell, or offer to sell a direct primary care agreement.

(4) For purposes of this section, a direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient, the patient's legal representative, or an employer.

(c) Allow a party to terminate the agreement by giving the other party at least 30 days' advance written notice. The

317634

agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.

(d) Describe the scope of primary care services that are covered by the monthly fee.

(e) Specify the monthly fee and any fees for primary care services not covered by the monthly fee.

(f) Specify the duration of the agreement and any automatic renewal provisions.

(g) Offer a refund to the patient of monthly fees paid in advance if the primary care provider ceases to offer primary care services for any reason.

(h) Contain in contrasting color and in not less than 12-point type the following statements on the same page as the applicant's signature:

1. The agreement is not health insurance and the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by the agreement.

2. The agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the Patient Protection and Affordable Care Act, 26 U.S.C. s. 5000A.

Section 5. The amendments made by this act to ss. 409.967, 627.42392, 641.31, and 641.394, Florida Statutes, may be known as the "Right Medicine Right Time Act."

Section 6. Effective January 1, 2017, paragraph (c) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

317634

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge. Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to both the agency and the public and have the capability to compare the availability of providers to network adequacy standards and to

317634

accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider.

2.a. Each managed care plan must publish any prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers. For Medicaid recipients diagnosed with hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's hemophilia disease management program.

b. If a managed care plan restricts the use of prescribed drugs through a fail-first protocol, it must establish a clear and convenient process that a prescribing physician may use to request an override of the restriction from the managed care plan. The managed care plan shall grant an override of the protocol within 24 hours if:

(I) Based on sound clinical evidence, the prescribing provider concludes that the preferred treatment required under the fail-first protocol has been ineffective in the treatment of the enrollee's disease or medical condition; or

(II) Based on sound clinical evidence or medical and scientific evidence, the prescribing provider believes that the preferred treatment required under the fail-first protocol:

317634

(A) Is likely to be ineffective given the known relevant physical or mental characteristics and medical history of the enrollee and the known characteristics of the drug regimen; or

(B) Will cause or is likely to cause an adverse reaction or other physical harm to the enrollee.

If the prescribing provider follows the fail-first protocol recommended by the managed care plan for an enrollee, the duration of treatment under the fail-first protocol may not exceed a period deemed appropriate by the prescribing provider. Following such period, if the prescribing provider deems the treatment provided under the protocol clinically ineffective, the enrollee is entitled to receive the course of therapy that the prescribing provider recommends, and the provider is not required to seek approval of an override of the fail-first protocol. As used in this subparagraph, the term "fail-first protocol" means a prescription practice that begins medication for a medical condition with the most cost-effective drug therapy and progresses to other more costly or risky therapies only if necessary.

3. Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.

4. Managed care plans serving children in the care and custody of the Department of Children and Families shall ~~must~~ maintain complete medical, dental, and behavioral health encounter information and participate in making such information available to the department or the applicable contracted community-based care lead agency for use in providing

317634

comprehensive and coordinated case management. The agency and the department shall establish an interagency agreement to provide guidance for the format, confidentiality, recipient, scope, and method of information to be made available and the deadlines for submission of the data. The scope of information available to the department are ~~shall be~~ the data that managed care plans are required to submit to the agency. The agency shall determine the plan's compliance with standards for access to medical, dental, and behavioral health services; the use of medications; and followup on all medically necessary services recommended as a result of early and periodic screening, diagnosis, and treatment.

Section 7. Effective January 1, 2017, section 627.42392, Florida Statutes, is created to read:

627.42392 Fail-first protocols.—If an insurer restricts the use of prescribed drugs through a fail-first protocol, it must establish a clear and convenient process that a prescribing physician may use to request an override of the restriction from the insurer. The insurer shall grant an override of the protocol within 24 hours if:

(1) Based on sound clinical evidence, the prescribing provider concludes that the preferred treatment required under the fail-first protocol has been ineffective in the treatment of the insured's disease or medical condition; or

(2) Based on sound clinical evidence or medical and scientific evidence, the prescribing provider believes that the preferred treatment required under the fail-first protocol:

(a) Is likely to be ineffective given the known relevant physical or mental characteristics and medical history of the

317634

insured and the known characteristics of the drug regimen; or

(b) Will cause or is likely to cause an adverse reaction or other physical harm to the insured.

If the prescribing provider follows the fail-first protocol recommended by the insurer for an insured, the duration of treatment under the fail-first protocol may not exceed a period deemed appropriate by the prescribing provider. Following such period, if the prescribing provider deems the treatment provided under the protocol clinically ineffective, the insured is entitled to receive the course of therapy that the prescribing provider recommends, and the provider is not required to seek approval of an override of the fail-first protocol. As used in this section, the term "fail-first protocol" means a prescription practice that begins medication for a medical condition with the most cost-effective drug therapy and progresses to other more costly or risky therapies only if necessary.

Section 8. Effective January 1, 2017, subsection (44) is added to section 641.31, Florida Statutes, to read:

641.31 Health maintenance contracts.—

(44) A health maintenance organization may not require a health care provider, by contract with another health care provider, a patient, or another individual or entity, to use a clinical decision support system or a laboratory benefits management program before the provider may order clinical laboratory services or in an attempt to direct or limit the provider's medical decisionmaking relating to the use of such services. This subsection may not be construed to prohibit any

317634

prior authorization requirements that the health maintenance organization may have regarding the provision of clinical laboratory services. As used in this subsection, the term:

(a) "Clinical decision support system" means software designed to direct or assist clinical decisionmaking by matching the characteristics of an individual patient to a computerized clinical knowledge base and providing patient-specific assessments or recommendations based on the match.

(b) "Clinical laboratory services" means the examination of fluids or other materials taken from the human body, which examination is ordered by a health care provider for use in the diagnosis, prevention, or treatment of a disease or in the identification or assessment of a medical or physical condition.

(c) "Laboratory benefits management program" means a health maintenance organization protocol that dictates or limits health care provider decisionmaking relating to the use of clinical laboratory services.

Section 9. Effective January 1, 2017, section 641.394, Florida Statutes, is created to read:

641.394 Fail-first protocols.—If a health maintenance organization restricts the use of prescribed drugs through a fail-first protocol, it must establish a clear and convenient process that a prescribing physician may use to request an override of the restriction from the health maintenance organization. The health maintenance organization shall grant an override of the protocol within 24 hours if:

(1) Based on sound clinical evidence, the prescribing provider concludes that the preferred treatment required under the fail-first protocol has been ineffective in the treatment of

317634

the subscriber's disease or medical condition; or

(2) Based on sound clinical evidence or medical and scientific evidence, the prescribing provider believes that the preferred treatment required under the fail-first protocol:

(a) Is likely to be ineffective given the known relevant physical or mental characteristics and medical history of the subscriber and the known characteristics of the drug regimen; or

(b) Will cause or is likely to cause an adverse reaction or other physical harm to the subscriber.

If the prescribing provider follows the fail-first protocol recommended by the health maintenance organization for a subscriber, the duration of treatment under the fail-first protocol may not exceed a period deemed appropriate by the prescribing provider. Following such period, if the prescribing provider deems the treatment provided under the protocol clinically ineffective, the subscriber is entitled to receive the course of therapy that the prescribing provider recommends, and the provider is not required to seek approval of an override of the fail-first protocol. As used in this section, the term "fail-first protocol" means a prescription practice that begins medication for a medical condition with the most cost-effective drug therapy and progresses to other more costly or risky therapies only if necessary.

Section 10. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

317634

(3) DEFINITIONS.—As used in this section, the term:

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor for volunteer, uncompensated services which allows the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. ~~The contract must be for volunteer, uncompensated services, except as provided in paragraph (4)(g).~~ For services to qualify as volunteer, uncompensated services under this section, the health care provider, or any employee or agent of the health care provider, must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract, except as provided in paragraph (4)(g). A free clinic as described in subparagraph (d)14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of such services. The appropriation or grant for the free clinic does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt or use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

317634

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association ~~and its employees~~ or a corporate medical group ~~and its employees~~.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic

317634

services or nonsurgical medical treatment free of charge to all low-income recipients.

15. A pharmacy or pharmacist licensed under chapter 465.

16.~~15.~~ Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services ~~on or after April 17, 1992,~~ as an agent of the governmental contractor, or any employee or agent of such health care provider, is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider, or any employee or agent of such health care provider, shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual


317634

transitions to treatment by another health care provider. A health care provider<u>, or any employee or agent of such health care provider,</u> under contract with the state may not be named as a defendant in any action arising out of medical care or treatment ~~provided on or after April 17, 1992,~~ under contracts entered into under this section. The contract must provide that:

(a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.

(b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.

(c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Patient selection and initial referral must be made by

317634

the governmental contractor or the provider. Patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

(e) If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.

(f) The provider is subject to supervision and regular inspection by the governmental contractor.

(g) ~~As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract,~~ A health care provider licensed under chapter 466, as an agent of the governmental contractor for purposes of s. 768.28(9), may allow a patient, or a parent or guardian of the patient, to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided to the patient within the scope of duties under the contract. This contribution may not exceed the actual cost of the dental laboratory charges.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(5) NOTICE OF AGENCY RELATIONSHIP.—The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be

317634

acknowledged in writing at the initial visit, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28. Thereafter, or with respect to any federally funded community health center, the notice requirements may be met by posting in a place conspicuous to all persons a notice that the health care provider, or federally funded community health center, is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28.

Section 11. Paragraphs (a) and (b) of subsection (9) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)(a) An ~~No~~ officer, employee, or agent of the state or of any of its subdivisions may not ~~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. However, such officer, employee, or agent shall be considered an adverse witness in a tort 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. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers is ~~shall be~~ by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions are ~~shall~~ not ~~be~~ liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider, and its employees or agents, when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); ~~and~~ any public

317634

defender or her or his employee or agent, including~~, among others,~~ an assistant public defender or ~~and~~ an investigator; and any physician licensed in this state who is a medical director for or member of a child protection team, as defined in s. 39.01, when carrying out her or his duties as a team member.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 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 health care; creating s. 381.4019, F.S.; establishing a joint local and state dental care access account initiative, subject to the availability of funding; authorizing the creation of dental care access accounts; specifying the purpose of the initiative; defining terms; providing criteria for the selection of dentists for participation in the initiative; providing for the establishment of accounts; requiring the Department of Health to implement an electronic benefit transfer system; providing for the use of funds deposited in the accounts; requiring the department to distribute state funds to accounts, subject to legislative appropriations; authorizing the department to accept contributions from a local source for deposit in a designated account; limiting the number of years that

317634

an account may remain open; providing for the immediate closing of accounts under certain circumstances; authorizing the department to transfer state funds remaining in a closed account at a specified time and to return unspent funds from local sources; requiring a dentist to repay funds in certain circumstances; authorizing the department to pursue disciplinary enforcement actions and to use other legal means to recover funds; requiring the department to establish by rule application procedures and a process to verify the use of funds withdrawn from a dental care access account; requiring the department to give priority to applications from dentists practicing in certain areas; requiring the Department of Economic Opportunity to rank dental health professional shortage areas and medically underserved areas; requiring the Department of Health to develop a marketing plan in cooperation with certain dental colleges and the Florida Dental Association; requiring the Department of Health to annually submit a report with certain information to the Governor and the Legislature; providing rulemaking authority to require the submission of information for such reporting; amending s. 395.002, F.S.; revising the definition of the term "ambulatory surgical center" or "mobile surgical facility"; amending s. 395.003, F.S.; requiring, as a condition of licensure and license renewal, that ambulatory surgical centers provide services to specified patients in at least a specified

317634

amount; defining a term; creating s. 624.27, F.S.; defining terms; specifying that a direct primary care agreement does not constitute insurance and is not subject to ch. 636, F.S., relating to prepaid limited health service organizations and discount medical plan organizations, or any other chapter of the Florida Insurance Code; specifying that entering into a direct primary care agreement does not constitute the business of insurance and is not subject to ch. 636, F.S., or any other chapter of the code; providing that certain certificates of authority and licenses are not required to market, sell, or offer to sell a direct primary care agreement; specifying requirements for a direct primary care agreement; providing a short title; amending s. 409.967, F.S.; requiring a managed care plan to establish a process by which a prescribing physician may request an override of certain restrictions in certain circumstances; providing the circumstances under which an override must be granted; defining the term "fail-first protocol"; creating s. 627.42392, F.S.; requiring an insurer to establish a process by which a prescribing physician may request an override of certain restrictions in certain circumstances; providing the circumstances under which an override must be granted; defining the term "fail-first protocol"; amending s. 641.31, F.S.; prohibiting a health maintenance organization from requiring that a health care provider use a clinical decision support system or a

laboratory benefits management program in certain circumstances; defining terms; providing for construction; creating s. 641.394, F.S.; requiring a health maintenance organization to establish a process by which a prescribing physician may request an override of certain restrictions in certain circumstances; providing the circumstances under which an override must be granted; defining the term "fail-first protocol"; amending s. 766.1115, F.S.; revising the definitions of the terms "contract" and "health care provider"; deleting an obsolete date; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; clarifying that a receipt of specified notice must be acknowledged by a patient or the patient's representative at the initial visit; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; amending s. 768.28, F.S.; revising the definition of the term "officer, employee, or agent" to include employees or agents of a health care provider as it applies to immunity from personal liability in certain actions, to include licensed physicians who are medical directors for or members of a child protection team, in certain circumstances; providing effective dates.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (317634) (with title amendment)

Delete line 202
and insert:
services. Ambulatory surgical centers shall report the same financial, patient, postoperative surgical infection, and other data pursuant to s. 408.061 as reported by hospitals to the Agency for Health Care Administration or otherwise published by the agency. For the purposes of this subsection, "charity care"

418830

11
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 765
15 and insert:
16 amount; requiring ambulatory surgical centers to
17 report certain data; defining a term; creating s.
18 624.27, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (317634) (with title amendment)

Delete line 206
and insert:
subject to collection procedures. An ambulatory surgical center that keeps patients later than midnight on the day of the procedure must comply with the same building codes and lifesafety codes as a hospital.

801734

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 765
and insert:
amount; defining a term; requiring ambulatory surgical centers to comply with certain building and lifesafety codes in certain circumstances; creating s. 624.27, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Flores) recommended the following:

Senate Amendment to Amendment (317634) (with title amendment)

Between lines 233 and 234
insert:

Section 4. (1) The Board of Medicine and the Board of Osteopathic Medicine shall adopt rules to establish requirements that ensure the safe and effective delivery of pediatric surgical care in ambulatory surgical centers in accordance with the American College of Surgeons' evidence-based standards for

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optimal pediatric care. The rules must establish minimum standards for pediatric-specific patient care, including at least the following:

(a) Surgical risk assessment.

(b) Anesthesiology.

(c) Resuscitation.

(d) Transfer agreements.

(e) Training and certification of pediatric health care providers.

(2) An ambulatory surgical center may not perform an operative procedure on an infant or a child younger than 18 years of age which requires that the infant or child remain in the facility past midnight on the day of the procedure until such rules have been adopted.

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

And the title is amended as follows:

Delete line 765

and insert:

amount; defining a term; requiring the Board of Medicine to adopt rules establishing requirements that ensure the safe and effective delivery of pediatric surgical care in ambulatory surgical centers; requiring that the rules address specific aspects of care; prohibiting ambulatory surgical centers from performing certain operative procedures until such rules are adopted; creating s. 624.27, F.S.;

597648

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 74 and 75

insert:

Section 3. (1) The Board of Medicine shall adopt rules to establish requirements that ensure the safe and effective delivery of pediatric surgical care in ambulatory surgical centers in accordance with the American College of Surgeons' evidence-based standards for optimal pediatric care. The rules must establish minimum standards for pediatric-specific patient

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care, including at least the following:

(a) Surgical risk assessment.

(b) Anesthesiology.

(c) Resuscitation.

(d) Transfer agreements.

(e) Training and certification of pediatric health care providers.

(2) An ambulatory surgical center may not perform operative procedures on an infant or a child younger than 18 years of age which require that the infant or child remain in the facility past midnight on the day of the procedure until such rules have been adopted.

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

And the title is amended as follows:

Between lines 8 and 9

insert:

requiring the Board of Medicine to adopt rules establishing requirements that ensure the safe and effective delivery of pediatric surgical care in ambulatory surgical centers; requiring that the rules address specific aspects of care; prohibiting ambulatory surgical centers from performing certain operative procedures until such rules are adopted;

By the Committee on Health Policy; and Senator Gaetz

588-02302-16 2016212c1

A bill to be entitled

An act relating to ambulatory surgical centers; amending s. 395.002, F.S.; revising the definition of the term "ambulatory surgical center" or "mobile surgical facility"; amending s. 395.003, F.S.; requiring, as a condition of licensure and license renewal, that ambulatory surgical centers provide services to specified patients; defining a term; providing an effective date.

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

Section 1. Subsection (3) of section 395.002, Florida Statutes, is amended to read:

395.002 Definitions.—As used in this chapter:

(3) "Ambulatory surgical center" or "mobile surgical facility" means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within 24 hours ~~the same working day and is not permitted to stay overnight~~, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003. Any structure or vehicle in which a physician maintains an office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical

588-02302-16 2016212c1

facility.

Section 2. Present subsections (6) through (10) of section 395.003, Florida Statutes, are redesignated as subsections (7) through (11), respectively, a new subsection (6) is added to that section, and present subsections (9) and (10) of that section are amended, to read:

395.003 Licensure; denial, suspension, and revocation.—

(6) An ambulatory surgical center, as a condition of initial licensure and license renewal, must provide services to Medicare patients, Medicaid patients, and patients who qualify for charity care. For the purposes of this subsection, "charity care" means uncompensated care delivered to uninsured patients with incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures.

(10)~~(9)~~ A hospital licensed as of June 1, 2004, shall be exempt from subsection (9) ~~subsection (8)~~ as long as the hospital maintains the same ownership, facility street address, and range of services that were in existence on June 1, 2004. Any transfer of beds, or other agreements that result in the establishment of a hospital or hospital services within the intent of this section, shall be subject to subsection (9) ~~subsection (8)~~. Unless the hospital is otherwise exempt under subsection (9) ~~subsection (8)~~, the agency shall deny or revoke the license of a hospital that violates any of the criteria set forth in that subsection.

(11)~~(10)~~ The agency may adopt rules implementing the licensure requirements set forth in subsection (9) ~~subsection (8)~~. Within 14 days after rendering its decision on a license

application or revocation, the agency shall publish its proposed decision in the Florida Administrative Register. Within 21 days after publication of the agency's decision, any authorized person may file a request for an administrative hearing. In administrative proceedings challenging the approval, denial, or revocation of a license pursuant to subsection (9) ~~subsection (8)~~, the hearing must be based on the facts and law existing at the time of the agency's proposed agency action. Existing hospitals may initiate or intervene in an administrative hearing to approve, deny, or revoke licensure under subsection (9) ~~subsection (8)~~ based upon a showing that an established program will be substantially affected by the issuance or renewal of a license to a hospital within the same district or service area.

Section 3. This act shall take effect July 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 Appropriations

BILL:	PCS/SB 234 (406770)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senator Gaetz and others
SUBJECT:	Dental Care
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 234 authorizes the creation of joint state and local dental care access accounts to promote local economic development and to encourage Florida-licensed dentists to practice in dental health professional shortage areas or medically underserved areas, or serve a medically underserved population, subject to the availability of funds.

The bill directs the Department of Health (DOH) to create individual benefit accounts through an electronic benefits transfer system for each dentist who satisfies the requirements of participation. A qualifying dentist must be actively employed by a public health program in a targeted area or demonstrate a commitment to opening a dental practice that serves at least 1,200 patients and obtaining local financial support from the community where the dentist will practice in that targeted area. No more than 10 new dental care access accounts may be established per fiscal year.

Funds from the account may be used to repay dental school loans; purchase property, facilities, or equipment for a dental office; or pay for transitional expenses relating to relocating or opening a dental practice. Subject to availability, a practitioner may receive funds for up to five years. An account may be terminated under certain conditions and any unspent funds returned to the donor or redistributed to other available applicants.

The DOH estimates first-year implementation expenditures of $306,064 in general revenue and recurring maintenance and support costs of $277,296 in general revenue.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Health Professional Shortage Areas

Health Professional Shortage Areas (HPSAs) are designated by the Health Resources and Services Administration (HRSA) within the U.S. Department of Health and Human Services according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and population groups within the United States that are experiencing a shortage of health professionals.

There are three categories of HPSA designation: (1) primary medical; (2) dental; and (3) mental health. For each discipline category, there are three types of HPSA designations based on the area or population group that is experiencing the shortage: (1) geographic area; (2) population group; and (3) facility.[1]

A geographic HPSA indicates that the entire area may experience barriers in accessing care, while a population HPSA indicates that a particular subpopulation of an area (e.g., homeless or low-income) may be underserved. Finally, a facility HPSA is a unique facility that primarily cares for an underserved population.

The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. The threshold for a dental HPSA is a population-to-provider ratio of at least 5,000 to 1 (or 4,000 to 1 in high-need communities).[2]

Medically Underserved Area

Medically Underserved Areas (MUA) are also designated by the U.S. Department of Health and Human Services. These areas are designated using one of three methods and can consist of a whole county, a group of contiguous counties, or census tracts.[3]

The first method, the Index of Medical Underservice (IMU), calculates a score based on the ratio of primary medical care physicians per 1,000 in population, percentage of the population with incomes below the federal poverty level, infant mortality rate, and percentage of population aged 65 or older.

The second method, Medically Underserved Populations (MUP), is based on data collected under the MUA process and reviews the ratio of primary care physicians serving the population

[1] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Shortage Designation: Health Professional Shortage Areas & Medically Underserved Areas/Population* http://www.hrsa.gov/shortage/ (last visited Sept. 21, 2015).
[2] *Id.*
[3] *Id.*

seeking the designation. A MUP is a group of people who encounter economic or cultural barriers to primary health care services.

The third process, Exceptional MUP Designations, includes those population groups which do not meet the criteria of an IMU but may be considered for designation because of unusual conditions with a request by the governor or another senior executive level official and a local state health official.[4]

The Dental Workforce

Nationally, the pool of dentists to serve the growing population of Americans is shrinking. The American Dental Association has found that 6,000 dentists retire each year in the U.S., while only 4,000 dental school students graduate each year. The projected shortage of dentists is even greater in rural America. Of the approximately 150,000 general dentists in practice in the U.S., only 14 percent practice in rural areas, 7.7 percent practice in large rural areas, 3.7 percent practice in small rural areas, and 2.2 percent practice in isolated rural areas. In 2003, there were 2,235 federally designated dental health professional shortage areas (HPSAs).[5] Today, the number of dental HPSAs has increased to over 4,900.

While the dental workforce is projected to grow by six percent between 2012 and 2025, it is not expected to meet the overall national demand. Florida is listed as the second neediest state, with 1,152 fewer dentists than the number required to serve the population.[6] Similar to the national trend, most dentists in Florida are concentrated in the more populous areas of the state, while rural areas, especially the central Panhandle counties and interior counties of south Florida, have a noticeable lack of dentists.[7] This is true for both general dentistry as well as for dental specialists. Additionally, over 20 percent of Florida licensed dentists that responded to the 2011-2012 *Florida Workforce Survey of Dentists* (survey) currently do not practice in Florida.[8]

Most dentists – 77.8 percent – practice in general dentistry.[9] In many rural communities, the county health department may be the primary provider of health care services, including dental care. Florida currently has 220 designated dental HPSAs, which have only enough dentists to serve 17 percent of the population living within them. For 2012, HRSA estimated that 853 additional dentists were required to meet the total need. This puts Florida among the states with

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[4] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Medically Underserved Areas/Populations* http://www.hrsa.gov/shortage/mua/index.html (last visited Sept. 21, 2015).

[5] National Rural Health Association, *Issue Paper: Recruitment and Retention of a Quality Health Workforce in Rural Areas*, (November 2006) (on file with the Senate Committee on Health Policy).

[6] U.S. Department of Health and Human Services, Health Resources and Services Administration, *National and State Level Projections of Dentists and Dental Hygienists in the U.S., 2012-2015*, pp.-3-4 (February 2015) http://bhpr.hrsa.gov/healthworkforce/supplydemand/dentistry/nationalstatelevelprojectionsdentists.pdf (last visited Oct. 20, 2015).

[7] Florida Dept. of Health, *Report on the 2011-2012 Workforce Survey of Dentists*, p. 6 (April 2014) http://www.floridahealth.gov/programs-and-services/community-health/dental-health/workforce-reports/florida-workforce-survey-of-dentists-2011-2012.pdf (last visited Sept. 21, 2015). In 2009, the DOH developed this workforce survey for dentists. The survey was administered on a voluntary basis in conjunction with biennial renewal of dental licenses and 87 percent of dentists with an active Florida license responded to the survey; a drop of 2 percent points from the 2009-2010 survey.

[8] *Id.* at 46.

[9] *Id.*

the highest proportion of their populations that are deemed underserved. By 2025, Florida's need grows to 1,152 dentists.[10]

The American Dental Association has also studied this issue and found that while there may be a sufficient number of dentists overall, there may be an inadequate number among certain populations or in certain geographic areas.[11] Children are acutely affected by the shortage of dentists to serve low income patients. In 2012, 26 percent of Medicaid-enrolled children in Florida received one or more dental care services, according data from the Agency for Health Care Administration (AHCA).[12] The survey noted a noticeable participation difference between private-practice dentists and those who practice in a safety-net setting. Of those in a private-office setting, only 13.7 percent report seeing Medicaid enrollees while over 60 percent of safety-net providers report Medicaid participation.[13]

In 2011, the Legislature passed HB 7107[14] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance program (MMA) and Long Term Care program. To implement MMA, the law required the AHCA to create an integrated managed care program for the delivery of Medicaid primary and acute care services, including dental. Medicaid recipients who are enrolled in MMA receive their dental services through managed care plans. Although most dental services are designated as a required benefit only for Medicaid recipients under age 21, many of the managed care plans also provide dental services for adults as an enhanced benefit.

The Cost of Dental Education

Among U.S. dental schools, the cost of a four-year degree has risen dramatically over the last 10 years – by 93 percent for in-state residents (from about $89,000 to $171,000) and by 82 percent for out-of-state residents (from $128,000 to $234,000). Dental school debt has increased proportionately. The average debt for dental school graduates in 2014 was $247,227.[15]

In 2013, Congress enacted the Bipartisan Student Loan Certainty Act of 2013 (Public Law 113-28) that tied student loan interest rates to the 10-year Treasury Note. For graduate and professional student loans, the interest rate is tied to 10-year Treasury Note plus 3.6 percent, but may not exceed 9.5 percent in any given year.[16] In June 2014, through a Presidential Memorandum, President Barack Obama directed the Secretary of Education to propose regulations to allow additional students with student loan debt to cap their payments at 10

[10] *Supra* note 6, at 9.
[11] Bradley Munson, B.A., and Marko Vujicic, Ph.D.: Health Policy Institute Research Brief, American Dental Association, *Supply of Dentists in the United States Likely to Grow*, p.2. (October 2014) http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_1.ashx (last visited Sept. 21, 2015).
[12] *Supra* note 7, at 8.
[13] *Supra* note 7, at 35.
[14] *See* chapter 2011-134, Laws of Fla.
[15] American Dental Education Association, *Federal Student Loans*, http://cqrcengage.com/adea/federalStudentLoan (last visited Sept. 21, 2015).
[16] *Id.*

percent of their income, by December 31, 2015.[17] The Presidential Memorandum called the plan, "*Pay as You Earn Plan."*[18]

Some studies indicate that increasing education costs and the prospect of indebtedness after dental school graduation could further erode access to care for vulnerable, underserved populations.[19] At least three studies, including a 2011 Florida Senate Report,[20] have recommended consideration of loan forgiveness programs as one strategy for addressing dental workforce shortage concerns.[21]

Florida does not have a current state program to address the dental health professional shortage areas or medically underserved areas. According to the DOH, there are 16 vacant positions (out of 82 or 19.5 percent) for dentists in the DOH.[22] Additionally, according to the Health Resources and Services Administration, there are 16 vacant dentist positions in Florida Dental Health Professional Shortage Areas as of September 16, 2015.[23]

Florida Health Services Corps

In 1992, the Legislature created the Florida Health Services Corps (FHSC), administered by the DOH, to encourage medical professionals to practice in locations that are underserved because of a shortage of qualified professionals.[24] The FHSC was defined[25] as a program that offered scholarships to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and

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[17] *Id.*

[18] The White House, Office of the Press Secretary, *Presidential Memorandum - Federal Student Loan Repayments* (June 9, 2014) https://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments (last visited Sept. 21, 2015).

[19] American Dental Education Association, *A Report of the ADEA Presidential Task Force on the Cost of Higher Education and Student Borrowing*, pp. 17-18 (March 2013) http://www.adea.org/uploadedFiles/ADEA/Content_Conversion_Final/publications/Documents/ADEACostandBorrowingReportMarch2013.pdf (last viewed Sept. 21, 2015). *See* also U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *Financing Dental Education: Public Policy Interests, Issues and Strategic Considerations*, p. 39 (2005) http://bhpr.hrsa.gov/healthworkforce1/reports/financedentaledu.pdf (last visited Sept. 21, 2015).

[20] Comm. on Health Regulation, The Florida Senate, *Review Eligibility of Dentist Licensure in Florida and Other Jurisdictions*, p.15 (Interim Report 2012-127) (Sept. 2011) http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-127hr.pdf (last visited Sept. 21, 2015). The report concluded, in part: "Florida may become more competitive in its recruitment of dentists in rural areas and may enhance Florida's dental care for underserved populations if it offers a loan forgiveness program. The program could require dentists seeking loan assistance to serve in a rural area (the Panhandle or central, south Florida) and require dentists to serve a certain percentage of Medicaid recipients or participate in the provider network of managed care entities participating in the Medicaid program for a particular period of time. Considering the current lack of state resources, it may be beneficial to limit the number of dentists that may apply to the loan forgiveness program and target resources to areas with the most need for general dentists or specialists." At the time, Florida was one of only eight states that did not have a state loan forgiveness program. According to the American Dental Association, it is one of only 11 states: Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Montana, Texas, and Utah as of July 2014. http://www.ada.org/~/media/ADA/Education%20and%20Careers/Files/dental-student-loan-repayment-resource.ashx (Last visited Mar. 2, 2015).

[21] American Dental Education Association, *supra* note 19, at 26; *Financing Dental Education*, *supra* note 19, at 40.

[22] Florida Dept. of Health, *Senate Bill Analysis SB 234*, p. 2, (Sept. 24. 2015) (on file with the Senate Health Policy Committee).

[23] *Id.*

[24] Chapter 92-33, s. 111, Laws of Fla. (creating s. 381.0302, F.S., effective July 1, 1992).

[25] Section 381.0302(2)(b)1., F.S. (2011).

nursing students, and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractic physicians, podiatric physicians, nurse practitioners, dentists, and physician assistants, in return for service in a public health care program[26] or in a medically underserved area.[27] Membership in the FHSC could be extended to any health care practitioner who provided uncompensated care to medically indigent patients.[28] All FHSC members were required to enroll in Medicaid and to accept all patients referred by the DOH pursuant to the program agreement.[29] In exchange for this service, an FHSC member was made an agent of the state and granted sovereign immunity under s. 768.28(9), F.S., when providing uncompensated care to medically indigent patients referred for treatment by the DOH.[30]

The statute authorized the DOH to provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last two years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of two years in the FHSC. During the period of service, the maximum amount of annual financial payments was limited to no more than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps (NHSC) loan repayment program.[31]

During the 20 years the program was authorized by law, it was funded only three times. A total of $3,684,000 was appropriated in the 1994-1995 fiscal year, 1995-1996 fiscal year, and 1996-1997 fiscal year for loan assistance payments to all categories of eligible health care practitioners. Of that amount, $971,664 was directed to 18 dentists for an average award of $25,570 per year of service in the program.[32] The 2007 Legislature attempted to reinvigorate the program by appropriating $700,000 to fund loan repayment assistance for dentists only.[33] However, the appropriation and a related substantive bill were vetoed.[34] The Legislature repealed the program in 2012.[35]

[26] "Public health program" was defined to include a county health department, a children's medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department. Section 381.0302(2)(e), F.S. (2011).
[27] "Medically underserved area" was defined to include: a geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations; a county health department, community health center, or migrant health center; or a geographic area or facility designated by rule of the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients. Section 381.0302(2)(c), F.S. (2011).
[28] "Medically indigent person" was defined as a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with income at or below 185 percent of the federal poverty level. Section 381.0302(2)(d), F.S. (2011).
[29] Section 381.0302(10), F.S. (2011).
[30] Section 381.0302(11), F.S. (2011).
[31] Section 381.0302(6), F.S. (2011).
[32] E-mail from Karen Lundberg, Florida Dept. of Health, to Joe Anne Hart, Florida Dental Association (Sept. 16, 2005) (on file with the Senate Committee on Health Policy).
[33] Chapter 2007-72, Laws of Fla. The funding was contained in Specific Appropriations 677A of the General Appropriation Act, but later vetoed pursuant to the Governor's line item veto authority.
[34] *Journal of the Florida Senate*, at 3 (June 12, 2007).
[35] Chapter 2012-184, s. 45, Laws of Fla.

National Health Service Corps

The NHSC programs provide scholarships and educational loan repayment to primary care providers[36] who agree to practice in areas that are medically underserved. NHSC loan repayment program (LRP) participants fulfill their service requirement by working at NHSC-approved sites in HPSAs. The NHSC-approved sites are community-based health care facilities that provide comprehensive outpatient, ambulatory, primary health care services. Eligible dental facilities must be located in a dental HPSA and offer comprehensive primary dental health services. NHSC-approved sites (with the exception of correctional facilities and free clinics) are required to provide services for free or on a sliding fee scale (SFS) or discounted fee schedule for low-income individuals. The SFS or discounted fee schedule is based upon the Federal Poverty Guidelines, and patient eligibility is determined by annual income and family size.[37]

The LRP provides funds to participants to repay their outstanding qualifying educational loans. Maximum loan reimbursement under the program is $50,000 for a two-year, full-time practice or up to $15,000 for a two-year, half-time clinical practice, although participants may be eligible to continue loan repayment beyond the initial term.[38,39] Participants who breach their LRP agreement are subject to monetary damages, which are the sum of the amount of assistance received by the participant representing any period of obligated service not completed, a penalty, and interest. Loan repayments are exempt from federal income and employment taxes and are not included as wages when determining benefits under the Social Security Act.[40] As of September 2015, there were 47 full-time-equivalent NHSC dentists in Florida.[41]

A second NHSC program, the State Loan Repayment Program (SLRP) offers cost-sharing grants to states to operate their own state educational loan repayment programs for primary care providers, including dental professionals, working in HPSAs within the state. The SLRP varies from state to state and may differ in eligible categories of providers, practice sites, length of required service commitment, and the amount of loan repayment assistance offered. However, there are certain statutory requirements SLRP grantees must meet. There is a minimum two-year service commitment with an additional one-year commitment for each year of additional support requested. Any SLRP program participant must practice at an eligible site located in a federally-designated HPSA. Like the NHSC loan repayment program awards, assistance provided through an SLRP is not taxable.

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[36] Primary care physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, dental hygienists, and behavioral and mental health providers, including health service psychologists, licensed clinical social workers, marriage and family therapists, psychiatrist nurse specialists, and licensed professional counselors.

[37] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps Site Reference Guide,* (April 14, 2014) http://nhsc.hrsa.gov/downloads/sitereference.pdf (last visited Mar. 2, 2015).

[38] The definition of part-time and full-time vary by discipline. The guidelines for both can be found in the *Fiscal Year 2015 Application and Program Guidance* packet beginning on 19 http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb, 27, 2015).

[39] U.S. Department of Health and Human Services, Loan Repayment Program - *Fiscal Year 2015 Application and Program Guidance,* pp. 4-5 (January 2015) http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb. 27, 2015).

[40] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps 101* (on file in the Senate Committee on Health Policy).

[41] E-mail from Debbie Reich, Supervisor, State Primary Care Office, Health Statistics and Performance Management, Florida Dept. of Health (Sept. 22, 2015) (on file with the Senate Committee on Health Policy).

In addition, the SLRP requires a $1 state match for every $1 provided under the federal grant. While the SLRP does not limit award amounts, the maximum award amount per provider that the federal government will support through its grant is $50,000 per year, with a minimum service commitment of two years.

Florida does not currently participate in SLRP.

III. Effect of Proposed Changes:

The bill creates the dental care access accounts initiative at the Department of Health (DOH). The initiative is conditioned on the availability of funds and is intended to encourage dentists to practice in dental health professional shortage areas or medically underserved areas or serve a medically underserved population. The bill defines several key terms:

- Dental health professional shortage area: A geographic area so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services;
- Medically underserved area: A designated health professional shortage area that lacks an adequate number of dental health professionals to serve Medicaid and other low income patients; and
- Public health program: A county health department, the Children's Medical Services program, a federally qualified community health center, a federally-funded migrant health center, or other publicly-funded or not-for-profit health care program designated by the DOH.

The initiative will be developed by the DOH to benefit dentists licensed to practice in this state who demonstrate, as required by DOH rule:

- Active employment by a public health program in a dental health professional shortage area or a medically underserved area; or
- A commitment to opening a private practice in a dental health professional shortage area or medically underserved area by residing in the area, maintaining a Medicaid provider agreement, enrolling with one or more Medicaid managed care plans, expending capital to open an office to serve at least 1,200 patients, and obtaining community financial support.

The DOH is required to establish dental access accounts for dentists who meet the requirements in the bill and to implement an electronic benefits transfer system. The bill requires that no more than 10 new dental care access accounts may be established per fiscal year. Funds from an account may be used only for specific purposes, such as payment of student loans; investment in property, facilities, or equipment necessary to establish an office and payment of transitional expenses related to relocating or opening a dental practice.

Subject to available appropriations, the DOH is required to distribute funds to the dental access accounts in amounts not to exceed $100,000 and no less than $10,000. A state award may not exceed three times the amount contributed to an account in the same year from a local source. The DOH is authorized to accept funds for deposit from local sources.

If a dentist qualifies for an account on the basis of his or her employment with a public health program, the dentist's salary and associated employer expenditures may count as local match for

a state award if the salary and employer expenditures are not state funds. State funds may not be used to calculate amounts contributed from local sources.

Accounts may be terminated if the dentist no longer works for a public health program and does not open a dental practice in a designated area within 30 days of terminating employment, the dentist's practice is no longer located in a dental professional shortage area or a medically underserved area, the provider has been terminated from Medicaid, or the provider has participated in any fraudulent activity. The DOH is directed to close an account five years after the first deposit or upon a dentist's termination from the program.

Any remaining funds after five years or from terminated accounts may be awarded to another account or returned to the donor. A dentist is required to repay any funds withdrawn from the account after the occurrence of an event which requires account closure, if the dentist fails to maintain eligibility for the program through employment in a public health program or establishing a dental practice for a minimum of two years, or uses the funds for unauthorized purposes. The DOH is authorized to recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

The DOH is authorized to adopt rules for application procedures that:

- Limit the number of applicants;
- Incorporate a documentation process for evidence of sufficient capital expenditures in opening a dental practice, such as contracts or leases or other acquisitions of a practice location of at least 30 percent of the value of equipment or supplies necessary to operate a practice; and
- Give priority to those applicants practicing in the areas receiving higher rankings by the Department of Economic Opportunity.

The DOH may also establish by rule a process to verify that funds withdrawn from an account have been used for the purposes authorized.

The Department of Economic Opportunity is directed to rank the dental professional shortage areas and medically underserved areas based on the extent to which limited access to dental care is impeding economic development.

The DOH must develop a marketing plan for the dental care access account initiative with the University of Florida's College of Dentistry, the Nova Southeastern College of Dental Medicine, the Lake Erie College of Osteopathic Medicine's School of Dental Medicine, and the Florida Dental Association.

Beginning in January 2018, the DOH is required to issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include:

- The number of patients served by dentists who receive funding under the bill;
- The number of Medicaid recipients served by dentists who receive funding under the bill;
- The average number of hours worked and patients served per week by dentists who receive funding under the bill;

- The number of dentists in each dental health professional shortage area or medically underserved area who receive funding under the bill;
- The amount and source of local matching funds received by the DOH;
- The amount of state funds awarded to dentists under the bill; and
- A complete accounting of the use of funds, by categories identified by the DOH, including, but not limited to, loans, supplies, equipment, rental property payments, real property purchases, and salary and wages.

The DOH is directed under the bill to adopt rules to require dentists to report information to the DOH that is necessary for the DOH to fulfill the reporting requirement.

The bill's effective date is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/SB 234, Floridians living in those areas identified as medically underserved and have little or no access to dental care could benefit from this initiative. The program could bring additional dental professionals to underserved communities. The initiative also permits the grantees to utilize the funds to transition or relocate to new areas and to build or renovate office space in rural communities, which would generate economic growth for small towns and cities. Additionally, dentists who qualify for loan repayment assistance will benefit from a reduction in their student loan debt.

C. Government Sector Impact:

If the program receives an appropriation, the bill will create a fiscal impact to the Department of Health (DOH) in order to implement and manage the dental care access account initiative. The estimated cost is $306,064 for the 2016-2017 fiscal year with a

recurring cost of $277,296 beginning with Fiscal Year 2017-2018. These costs would need to be funded with general revenue.

The initial cost for the electronic benefit transfer contract/vendor is estimated at $100,000 for the first year and $50,000 for the second year. The DOH reports that there is a current EBT system that could be used to implement this system, but it is unknown if it could accommodate all of the provisions of this bill. The EBT systems charge a nominal fee of approximately $0.50 per participant per month as a maintenance fee. The DOH also anticipates a withdrawal fee of at least $1 per transaction when a dentist makes a withdrawal from his or her account.

The number of dentists qualifying for this initiative is unknown.[42] However, the DOH estimates at least 32 dentists could be served annually. The cost of the EBT system would have to be negotiated based on the number of dentists participating in the program.

The DOH also reports the bill will create a workload impact that current staff is unable to meet. Two additional full-time equivalent (FTE) staff members would be required to develop the application process and adopt rules. Staff will also be needed to monitor activity, dentist conduct, dentist membership status, and rulings by the Board of Dentistry on recipients.

The following are the estimated expenditures for the DOH:[43]

Estimated Expenditures (General Revenue)	1st Year	2nd Year Annualization/Recurring
SALARIES		
1 FTE **Health Care Program Analyst @ $40,948 - pay grade 24**	$41,460	$55,280
1 FTE **Senior Management Analyst II @ $46,381 - pay grade 26**	$47,114	$62,818
EXPENSES		
2 FTEs Calculated with standard DOH professional package (limited travel) @ $15,742	$31,484	$23,486
2 docking stations (@ $142 each	$294	$0-
HUMAN RESOURCES SERVICES		
2 FTEs Calculated with standard DOH Central Office package @ $356	$712	$712
Operating Capital Outlay		
Operating Capital Outlay	$0.00	$0.00

[42] Florida Dept. of Health, *Senate Bill Analysis 234,* pp.4-5, (Sept. 24, 2015) (on file with the Senate Committee on Health Policy).
[43] *Id., at p 2.*

Estimated Expenditures (General Revenue)	1st Year	2nd Year Annualization/Recurring
Contractual Services		
Estimate for the development, implementation and maintenance of an electronic benefit transfer (EBT) system	$100,000	$50,000
Marketing Campaign*	$85,000	$85,000
TOTAL ESTIMATED EXPENDITURES	**$306,064**	**$277,296**

*The DOH is also directed to develop a marketing plan with Florida-based dental schools.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.4019 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 Health and Human Services on November 18, 2015:
The committee substitute requires that no more than 10 new dental care access accounts may be established per fiscal year.

B. Amendments:

None.

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576-01373-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to dental care; creating s. 381.4019, F.S.; establishing a joint local and state dental care access account initiative, subject to the availability of funding; authorizing the creation of dental care access accounts; specifying the purpose of the initiative; defining terms; providing criteria for the selection of dentists for participation in the initiative; providing for the establishment of accounts; limiting the number of new accounts that may be established per fiscal year; requiring the Department of Health to implement an electronic benefit transfer system; providing for the use of funds deposited in the accounts; requiring the department to distribute state funds to accounts, subject to legislative appropriations; authorizing the department to accept contributions from a local source for deposit in a designated account; limiting the number of years that an account may remain open; providing for the immediate closing of accounts under certain circumstances; authorizing the department to transfer state funds remaining in a closed account at a specified time and to return unspent funds from local sources; requiring a dentist to repay funds in certain circumstances; authorizing the department to pursue disciplinary enforcement actions and to use other legal means to recover funds; requiring the

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department to establish by rule application procedures and a process to verify the use of funds withdrawn from a dental care access account; requiring the department to give priority to applications from dentists practicing in certain areas; requiring the Department of Economic Opportunity to rank dental health professional shortage areas and medically underserved areas; requiring the Department of Health to develop a marketing plan in cooperation with certain dental colleges and the Florida Dental Association; requiring the Department of Health to annually submit a report with certain information to the Governor and the Legislature; providing rulemaking authority to require the submission of information for such reporting; providing an effective date.

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

Section 1. Section 381.4019, Florida Statutes, is created to read:

381.4019 Dental care access accounts.—Subject to the availability of funds, the Legislature establishes a joint local and state dental care access account initiative and authorizes the creation of dental care access accounts to promote economic development by supporting qualified dentists who practice in dental health professional shortage areas or medically underserved areas or who treat a medically underserved population. The Legislature recognizes that maintaining good oral health is integral to overall health status and that the

good health of residents of this state is an important contributing factor in economic development. Better health, including better oral health, enables workers to be more productive, reduces the burden of health care costs, and enables children to improve in cognitive development.

(1) As used in this section, the term:

(a) "Dental health professional shortage area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(b) "Department" means the Department of Health.

(c) "Medically underserved area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(d) "Public health program" means a county health department, the Children's Medical Services Network, a federally qualified community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program as designated by the department.

(2) The department shall develop and implement a dental care access account initiative to benefit dentists licensed to practice in this state who demonstrate, as required by the department by rule:

(a) Active employment by a public health program located in a dental health professional shortage area or a medically underserved area; or

(b) A commitment to opening a private practice in a dental health professional shortage area or a medically underserved area, as demonstrated by the dentist residing in the designated

area, maintaining an active Medicaid provider agreement, enrolling in one or more Medicaid managed care plans, expending sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients, and obtaining financial support from the local community in which the dentist is practicing or intending to open a practice.

(3) The department shall establish dental care access accounts as individual benefit accounts for each dentist who satisfies the requirements of subsection (2) and is selected by the department for participation. The department may not establish more than 10 new dental care access accounts per fiscal year. The department shall implement an electronic benefit transfer system that enables each dentist to spend funds from his or her account for the purposes described in subsection (4).

(4) Funds contributed from state and local sources to a dental care access account may be used for one or more of the following purposes:

(a) Repayment of dental school student loans.

(b) Investment in property, facilities, or equipment necessary to establish and operate a dental office consisting of no fewer than two operatories.

(c) Payment of transitional expenses related to the relocation or opening of a dental practice which are specifically approved by the department.

(5) Subject to legislative appropriation, the department shall distribute state funds as an award to each dental care access account. An individual award must be in an amount not

more than $100,000 and not less than $10,000, except that a state award may not exceed 3 times the amount contributed to an account in the same year from local sources. If a dentist qualifies for a dental care access account under paragraph (2)(a), the dentist's salary and associated employer expenditures constitute a local match and qualify the account for a state award if the salary and associated expenditures do not come from state funds. State funds may not be included in a determination of the amount contributed to an account from local sources.

(6) The department may accept contributions of funds from a local source for deposit in the account of a dentist designated by the donor.

(7) The department shall close an account no later than 5 years after the first deposit of state or local funds into that account or immediately upon the occurrence of any of the following:

(a) Termination of the dentist's employment with a public health program, unless, within 30 days of such termination, the dentist opens a private practice in a dental health professional shortage area or medically underserved area.

(b) Termination of the dentist's practice in a designated dental health professional shortage area or medically underserved area.

(c) Termination of the dentist's participation in the Florida Medicaid program.

(d) Participation by the dentist in any fraudulent activity.

(8) Any state funds remaining in a closed account may be

awarded and transferred to another account concurrent with the distribution of funds under the next legislative appropriation for the initiative. The department shall return to the donor on a pro rata basis unspent funds from local sources which remain in a closed account.

(9) If the department determines that a dentist has withdrawn account funds after the occurrence of an event specified in subsection (7), has used funds for purposes not authorized in subsection (4), or has not remained eligible for a dental care access account for a minimum of 2 years, the dentist shall repay the funds to his or her account. The department may recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

(10) The department shall establish by rule:

(a) Application procedures for dentists who wish to apply for a dental care access account. An applicant may demonstrate that he or she has expended sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients by documenting contracts for the purchase or lease of a practice location and providing executed obligations for the purchase or other acquisition of at least 30 percent of the value of equipment or supplies necessary to operate a dental practice. The department may limit the number of applicants selected and shall give priority to those applicants practicing in the areas receiving higher rankings pursuant to subsection (11). The department may establish additional criteria for selection which recognize an applicant's active engagement with and commitment to the community providing a local match.

(b) A process to verify that funds withdrawn from a dental care access account have been used solely for the purposes described in subsection (4).

(11) The Department of Economic Opportunity shall rank the dental health professional shortage areas and medically underserved areas of the state based on the extent to which limited access to dental care is impeding the areas' economic development, with a higher ranking indicating a greater impediment to development.

(12) The department shall develop a marketing plan for the dental care access account initiative in cooperation with the University of Florida College of Dentistry, the Nova Southeastern University College of Dental Medicine, the Lake Erie College of Osteopathic Medicine School of Dental Medicine, and the Florida Dental Association.

(13)(a) By January 1 of each year, beginning in 2018, the department shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include:

1. The number of patients served by dentists receiving funding under this section.

2. The number of Medicaid recipients served by dentists receiving funding under this section.

3. The average number of hours worked and patients served in a week by dentists receiving funding under this section.

4. The number of dentists in each dental health professional shortage area or medically underserved area receiving funding under this section.

5. The amount and source of local matching funds received

by the department.

6. The amount of state funds awarded to dentists under this section.

7. A complete accounting of the use of funds by categories identified by the department, including, but not limited to, loans, supplies, equipment, rental property payments, real property purchases, and salary and wages.

(b) The department shall adopt rules to require dentists to report information to the department which is necessary for the department to fulfill its reporting requirement under this subsection.

Section 2. This act shall take effect July 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 Appropriations

BILL:	SB 234
INTRODUCER:	Senator Gaetz and others
SUBJECT:	Dental Care
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 234 authorizes the creation of joint state and local dental care access accounts to promote local economic development and to encourage Florida-licensed dentists to practice in dental health professional shortage areas or medically underserved areas, or serve a medically underserved population, subject to the availability of funds.

The bill directs the Department of Health (DOH) to create individual benefit accounts through an electronic benefits transfer system for each dentist who satisfies the requirements of participation. A qualifying dentist must be actively employed by a public health program in a targeted area or demonstrate a commitment to opening a dental practice that serves at least 1,200 patients and obtaining local financial support from the community where the dentist will practice in that targeted area.

Funds from the account may be used to repay dental school loans; purchase property, facilities, or equipment for a dental office; or pay for transitional expenses relating to relocating or opening a dental practice. Subject to availability, a practitioner may receive funds for up to five years. An account may be terminated under certain conditions and any unspent funds returned to the donor or redistributed to other available applicants.

The DOH estimates first-year implementation expenditures of $306,064 in general revenue and recurring maintenance and support costs of $277,296 in general revenue.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Health Professional Shortage Areas

Health Professional Shortage Areas (HPSAs) are designated by the Health Resources and Services Administration (HRSA) within the U.S. Department of Health and Human Services according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and population groups within the United States that are experiencing a shortage of health professionals.

There are three categories of HPSA designation: (1) primary medical; (2) dental; and (3) mental health. For each discipline category, there are three types of HPSA designations based on the area or population group that is experiencing the shortage: (1) geographic area; (2) population group; and (3) facility.[1]

A geographic HPSA indicates that the entire area may experience barriers in accessing care, while a population HPSA indicates that a particular subpopulation of an area (e.g., homeless or low-income) may be underserved. Finally, a facility HPSA is a unique facility that primarily cares for an underserved population.

The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. The threshold for a dental HPSA is a population-to-provider ratio of at least 5,000 to 1 (or 4,000 to 1 in high-need communities).[2]

Medically Underserved Area

Medically Underserved Areas (MUA) are also designated by the U.S. Department of Health and Human Services. These areas are designated using one of three methods and can consist of a whole county, a group of contiguous counties, or census tracts.[3]

The first method, the Index of Medical Underservice (IMU), calculates a score based on the ratio of primary medical care physicians per 1,000 in population, percentage of the population with incomes below the federal poverty level, infant mortality rate, and percentage of population aged 65 or older.

The second method, Medically Underserved Populations (MUP), is based on data collected under the MUA process and reviews the ratio of primary care physicians serving the population seeking the designation. A MUP is a group of people who encounter economic or cultural barriers to primary health care services.

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[1] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Shortage Designation: Health Professional Shortage Areas & Medically Underserved Areas/Population* http://www.hrsa.gov/shortage/ (last visited Sept. 21, 2015).
[2] *Id.*
[3] *Id.*

The third process, Exceptional MUP Designations, includes those population groups which do not meet the criteria of an IMU but may be considered for designation because of unusual conditions with a request by the governor or another senior executive level official and a local state health official.[4]

The Dental Workforce

Nationally, the pool of dentists to serve the growing population of Americans is shrinking. The American Dental Association has found that 6,000 dentists retire each year in the U.S., while only 4,000 dental school students graduate each year. The projected shortage of dentists is even greater in rural America. Of the approximately 150,000 general dentists in practice in the U.S., only 14 percent practice in rural areas, 7.7 percent practice in large rural areas, 3.7 percent practice in small rural areas, and 2.2 percent practice in isolated rural areas. In 2003, there were 2,235 federally designated dental health professional shortage areas (HPSAs).[5] Today, the number of dental HPSAs has increased to over 4,900.

While the dental workforce is projected to grow by six percent between 2012 and 2025, it is not expected to meet the overall national demand. Florida is listed as the second neediest state, with 1,152 fewer dentists than the number required to serve the population.[6] Similar to the national trend, most dentists in Florida are concentrated in the more populous areas of the state, while rural areas, especially the central Panhandle counties and interior counties of south Florida, have a noticeable lack of dentists.[7] This is true for both general dentistry as well as for dental specialists. Additionally, over 20 percent of Florida licensed dentists that responded to the 2011-2012 *Florida Workforce Survey of Dentists* (survey) currently do not practice in Florida.[8]

Most dentists – 77.8 percent – practice in general dentistry.[9] In many rural communities, the county health department may be the primary provider of health care services, including dental care. Florida currently has 220 designated dental HPSAs, which have only enough dentists to serve 17 percent of the population living within them. For 2012, HRSA estimated that 853 additional dentists were required to meet the total need. This puts Florida among the states with the highest proportion of their populations that are deemed underserved. By 2025, Florida's need grows to 1,152 dentists.[10]

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[4] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Medically Underserved Areas/Populations* http://www.hrsa.gov/shortage/mua/index.html (last visited Sept. 21, 2015).

[5] National Rural Health Association, *Issue Paper: Recruitment and Retention of a Quality Health Workforce in Rural Areas*, (November 2006) (on file with the Senate Committee on Health Policy).

[6] U.S. Department of Health and Human Services, Health Resources and Services Administration, *National and State Level Projections of Dentists and Dental Hygienists in the U.S., 2012-2015*, pp.-3-4 (February 2015) http://bhpr.hrsa.gov/healthworkforce/supplydemand/dentistry/nationalstatelevelprojectionsdentists.pdf (last visited Oct. 20, 2015).

[7] Florida Dept. of Health, *Report on the 2011-2012 Workforce Survey of Dentists*, p. 6 (April 2014) http://www.floridahealth.gov/programs-and-services/community-health/dental-health/workforce-reports/florida-workforce-survey-of-dentists-2011-2012.pdf (last visited Sept. 21, 2015). In 2009, the DOH developed this workforce survey for dentists. The survey was administered on a voluntary basis in conjunction with biennial renewal of dental licenses and 87 percent of dentists with an active Florida license responded to the survey; a drop of 2 percent points from the 2009-2010 survey.

[8] *Id.* at 46.

[9] *Id.*

[10] *Supra* note 6, at 9.

The American Dental Association has also studied this issue and found that while there may be a sufficient number of dentists overall, there may be an inadequate number among certain populations or in certain geographic areas.[11] Children are acutely affected by the shortage of dentists to serve low income patients. In 2012, 26 percent of Medicaid-enrolled children in Florida received one or more dental care services, according data from the Agency for Health Care Administration (AHCA).[12] The survey noted a noticeable participation difference between private-practice dentists and those who practice in a safety-net setting. Of those in a private-office setting, only 13.7 percent report seeing Medicaid enrollees while over 60 percent of safety-net providers report Medicaid participation.[13]

In 2011, the Legislature passed HB 7107[14] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance program (MMA) and Long Term Care program. To implement MMA, the law required the AHCA to create an integrated managed care program for the delivery of Medicaid primary and acute care services, including dental. Medicaid recipients who are enrolled in MMA receive their dental services through managed care plans. Although most dental services are designated as a required benefit only for Medicaid recipients under age 21, many of the managed care plans also provide dental services for adults as an enhanced benefit.

The Cost of Dental Education

Among U.S. dental schools, the cost of a four-year degree has risen dramatically over the last 10 years – by 93 percent for in-state residents (from about $89,000 to $171,000) and by 82 percent for out-of-state residents (from $128,000 to $234,000). Dental school debt has increased proportionately. The average debt for dental school graduates in 2014 was $247,227.[15]

In 2013, Congress enacted the Bipartisan Student Loan Certainty Act of 2013 (Public Law 113-28) that tied student loan interest rates to the 10-year Treasury Note. For graduate and professional student loans, the interest rate is tied to 10-year Treasury Note plus 3.6 percent, but may not exceed 9.5 percent in any given year.[16] In June 2014, through a Presidential Memorandum, President Barack Obama directed the Secretary of Education to propose regulations to allow additional students with student loan debt to cap their payments at 10

[11] Bradley Munson, B.A., and Marko Vujicic, Ph.D.: Health Policy Institute Research Brief, American Dental Association, *Supply of Dentists in the United States Likely to Grow*, p.2. (October 2014) http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_1.ashx (last visited Sept. 21, 2015).
[12] *Supra* note 7, at 8.
[13] *Supra* note 7, at 35.
[14] *See* chapter 2011-134, Laws of Fla.
[15] American Dental Education Association, *Federal Student Loans*, http://cqrcengage.com/adea/federalStudentLoan (last visited Sept. 21, 2015).
[16] *Id.*

percent of their income, by December 31, 2015.[17] The Presidential Memorandum called the plan, "*Pay as You Earn Plan."*[18]

Some studies indicate that increasing education costs and the prospect of indebtedness after dental school graduation could further erode access to care for vulnerable, underserved populations.[19] At least three studies, including a 2011 Florida Senate Report,[20] have recommended consideration of loan forgiveness programs as one strategy for addressing dental workforce shortage concerns.[21]

Florida does not have a current state program to address the dental health professional shortage areas or medically underserved areas. According to the DOH, there are 16 vacant positions (out of 82 or 19.5 percent) for dentists in the DOH.[22] Additionally, according to the Health Resources and Services Administration, there are 16 vacant dentist positions in Florida Dental Health Professional Shortage Areas as of September 16, 2015.[23]

Florida Health Services Corps

In 1992, the Legislature created the Florida Health Services Corps (FHSC), administered by the DOH, to encourage medical professionals to practice in locations that are underserved because of a shortage of qualified professionals.[24] The FHSC was defined[25] as a program that offered scholarships to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and

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[17] *Id.*

[18] The White House, Office of the Press Secretary, *Presidential Memorandum - Federal Student Loan Repayments* (June 9, 2014) https://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments (last visited Sept. 21, 2015).

[19] American Dental Education Association, *A Report of the ADEA Presidential Task Force on the Cost of Higher Education and Student Borrowing*, pp. 17-18 (March 2013) http://www.adea.org/uploadedFiles/ADEA/Content_Conversion_Final/publications/Documents/ADEACostandBorrowingReportMarch2013.pdf (last viewed Sept. 21, 2015). *See* also U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *Financing Dental Education: Public Policy Interests, Issues and Strategic Considerations*, p. 39 (2005) http://bhpr.hrsa.gov/healthworkforce1/reports/financedentaledu.pdf (last visited Sept. 21, 2015).

[20] Comm. on Health Regulation, The Florida Senate, *Review Eligibility of Dentist Licensure in Florida and Other Jurisdictions*, p.15 (Interim Report 2012-127) (Sept. 2011) http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-127hr.pdf (last visited Sept. 21, 2015). The report concluded, in part: "Florida may become more competitive in its recruitment of dentists in rural areas and may enhance Florida's dental care for underserved populations if it offers a loan forgiveness program. The program could require dentists seeking loan assistance to serve in a rural area (the Panhandle or central, south Florida) and require dentists to serve a certain percentage of Medicaid recipients or participate in the provider network of managed care entities participating in the Medicaid program for a particular period of time. Considering the current lack of state resources, it may be beneficial to limit the number of dentists that may apply to the loan forgiveness program and target resources to areas with the most need for general dentists or specialists." At the time, Florida was one of only eight states that did not have a state loan forgiveness program. According to the American Dental Association, it is one of only 11 states: Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Montana, Texas, and Utah as of July 2014. http://www.ada.org/~/media/ADA/Education%20and%20Careers/Files/dental-student-loan-repayment-resource.ashx (Last visited Mar. 2, 2015).

[21] American Dental Education Association, *supra* note 19, at 26; *Financing Dental Education*, *supra* note 19, at 40.

[22] Florida Dept. of Health, *Senate Bill Analysis SB 234*, p. 2, (Sept. 24. 2015) (on file with the Senate Health Policy Committee).

[23] *Id.*

[24] Chapter 92-33, s. 111, Laws of Fla. (creating s. 381.0302, F.S., effective July 1, 1992).

[25] Section 381.0302(2)(b)1., F.S. (2011).

nursing students, and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractic physicians, podiatric physicians, nurse practitioners, dentists, and physician assistants, in return for service in a public health care program[26] or in a medically underserved area.[27] Membership in the FHSC could be extended to any health care practitioner who provided uncompensated care to medically indigent patients.[28] All FHSC members were required to enroll in Medicaid and to accept all patients referred by the DOH pursuant to the program agreement.[29] In exchange for this service, an FHSC member was made an agent of the state and granted sovereign immunity under s. 768.28(9), F.S., when providing uncompensated care to medically indigent patients referred for treatment by the DOH.[30]

The statute authorized the DOH to provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last two years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of two years in the FHSC. During the period of service, the maximum amount of annual financial payments was limited to no more than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps (NHSC) loan repayment program.[31]

During the 20 years the program was authorized by law, it was funded only three times. A total of $3,684,000 was appropriated in the 1994-1995 fiscal year, 1995-1996 fiscal year, and 1996-1997 fiscal year for loan assistance payments to all categories of eligible health care practitioners. Of that amount, $971,664 was directed to 18 dentists for an average award of $25,570 per year of service in the program.[32] The 2007 Legislature attempted to reinvigorate the program by appropriating $700,000 to fund loan repayment assistance for dentists only.[33] However, the appropriation and a related substantive bill were vetoed.[34] The Legislature repealed the program in 2012.[35]

[26] "Public health program" was defined to include a county health department, a children's medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department. Section 381.0302(2)(e), F.S. (2011).
[27] "Medically underserved area" was defined to include: a geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations; a county health department, community health center, or migrant health center; or a geographic area or facility designated by rule of the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients. Section 381.0302(2)(c), F.S. (2011).
[28] "Medically indigent person" was defined as a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with income at or below 185 percent of the federal poverty level. Section 381.0302(2)(d), F.S. (2011).
[29] Section 381.0302(10), F.S. (2011).
[30] Section 381.0302(11), F.S. (2011).
[31] Section 381.0302(6), F.S. (2011).
[32] E-mail from Karen Lundberg, Florida Dept. of Health, to Joe Anne Hart, Florida Dental Association (Sept. 16, 2005) (on file with the Senate Committee on Health Policy).
[33] Chapter 2007-72, Laws of Fla. The funding was contained in Specific Appropriations 677A of the General Appropriation Act, but later vetoed pursuant to the Governor's line item veto authority.
[34] *Journal of the Florida Senate*, at 3 (June 12, 2007).
[35] Chapter 2012-184, s. 45, Laws of Fla.

National Health Service Corps

The NHSC programs provide scholarships and educational loan repayment to primary care providers[36] who agree to practice in areas that are medically underserved. NHSC loan repayment program (LRP) participants fulfill their service requirement by working at NHSC-approved sites in HPSAs. The NHSC-approved sites are community-based health care facilities that provide comprehensive outpatient, ambulatory, primary health care services. Eligible dental facilities must be located in a dental HPSA and offer comprehensive primary dental health services. NHSC-approved sites (with the exception of correctional facilities and free clinics) are required to provide services for free or on a sliding fee scale (SFS) or discounted fee schedule for low-income individuals. The SFS or discounted fee schedule is based upon the Federal Poverty Guidelines, and patient eligibility is determined by annual income and family size.[37]

The LRP provides funds to participants to repay their outstanding qualifying educational loans. Maximum loan reimbursement under the program is $50,000 for a two-year, full-time practice or up to $15,000 for a two-year, half-time clinical practice, although participants may be eligible to continue loan repayment beyond the initial term.[38,39] Participants who breach their LRP agreement are subject to monetary damages, which are the sum of the amount of assistance received by the participant representing any period of obligated service not completed, a penalty, and interest. Loan repayments are exempt from federal income and employment taxes and are not included as wages when determining benefits under the Social Security Act.[40] As of September 2015, there were 47 full-time-equivalent NHSC dentists in Florida.[41]

A second NHSC program, the State Loan Repayment Program (SLRP) offers cost-sharing grants to states to operate their own state educational loan repayment programs for primary care providers, including dental professionals, working in HPSAs within the state. The SLRP varies from state to state and may differ in eligible categories of providers, practice sites, length of required service commitment, and the amount of loan repayment assistance offered. However, there are certain statutory requirements SLRP grantees must meet. There is a minimum two-year service commitment with an additional one-year commitment for each year of additional support requested. Any SLRP program participant must practice at an eligible site located in a federally-designated HPSA. Like the NHSC loan repayment program awards, assistance provided through an SLRP is not taxable.

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[36] Primary care physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, dental hygienists, and behavioral and mental health providers, including health service psychologists, licensed clinical social workers, marriage and family therapists, psychiatrist nurse specialists, and licensed professional counselors.

[37] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps Site Reference Guide,* (April 14, 2014) http://nhsc.hrsa.gov/downloads/sitereference.pdf (last visited Mar. 2, 2015).

[38] The definition of part-time and full-time vary by discipline. The guidelines for both can be found in the *Fiscal Year 2015 Application and Program Guidance* packet beginning on 19 http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb, 27, 2015).

[39] U.S. Department of Health and Human Services, Loan Repayment Program - *Fiscal Year 2015 Application and Program Guidance,* pp. 4-5 (January 2015) http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb. 27, 2015).

[40] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps 101* (on file in the Senate Committee on Health Policy).

[41] E-mail from Debbie Reich, Supervisor, State Primary Care Office, Health Statistics and Performance Management, Florida Dept. of Health (Sept. 22, 2015) (on file with the Senate Committee on Health Policy).

In addition, the SLRP requires a $1 state match for every $1 provided under the federal grant. While the SLRP does not limit award amounts, the maximum award amount per provider that the federal government will support through its grant is $50,000 per year, with a minimum service commitment of two years.

Florida does not currently participate in SLRP.

III. Effect of Proposed Changes:

The bill creates the dental care access accounts initiative at the Department of Health (DOH). The initiative is conditioned on the availability of funds and is intended to encourage dentists to practice in dental health professional shortage areas or medically underserved areas or serve a medically underserved population. The bill defines several key terms:

- Dental health professional shortage area: A geographic area so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services;
- Medically underserved area: A designated health professional shortage area that lacks an adequate number of dental health professionals to serve Medicaid and other low income patients; and
- Public health program: A county health department, the Children's Medical Services program, a federally qualified community health center, a federally-funded migrant health center, or other publicly-funded or not-for-profit health care program designated by the DOH.

The initiative will be developed by the DOH to benefit dentists licensed to practice in this state who demonstrate, as required by DOH rule:

- Active employment by a public health program in a dental health professional shortage area or a medically underserved area; or
- A commitment to opening a private practice in a dental health professional shortage area or medically underserved area by residing in the area, maintaining a Medicaid provider agreement, enrolling with one or more Medicaid managed care plans, expending capital to open an office to serve at least 1,200 patients, and obtaining community financial support.

The DOH is required to establish dental access accounts for dentists who meet the requirements in the bill and to implement an electronic benefits transfer system. Funds from the account may be used only for specific purposes, such as payment of student loans; investment in property, facilities, or equipment necessary to establish an office and payment of transitional expenses related to relocating or opening a dental practice.

Subject to available appropriations, the DOH is required to distribute funds to the dental access accounts in amounts not to exceed $100,000 and no less than $10,000. A state award may not exceed three times the amount contributed to an account in the same year from a local source. The DOH is authorized to accept funds for deposit from local sources.

If a dentist qualifies for an account on the basis of his or her employment with a public health program, the dentist's salary and associated employer expenditures may count as local match for

a state award if the salary and employer expenditures are not state funds. State funds may not be used to calculate amounts contributed from local sources.

Accounts may be terminated if the dentist no longer works for a public health program and does not open a dental practice in a designated area within 30 days of terminating employment, the dentist's practice is no longer located in a dental professional shortage area or a medically underserved area, the provider has been terminated from Medicaid, or the provider has participated in any fraudulent activity. The DOH is directed to close an account five years after the first deposit or upon a dentist's termination from the program.

Any remaining funds after five years or from terminated accounts may be awarded to another account or returned to the donor. A dentist is required to repay any funds withdrawn from the account after the occurrence of an event which requires account closure, if the dentist fails to maintain eligibility for the program through employment in a public health program or establishing a dental practice for a minimum of two years, or uses the funds for unauthorized purposes. The DOH is authorized to recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

The DOH is authorized to adopt rules for application procedures that:

- Limit the number of applicants;
- Incorporate a documentation process for evidence of sufficient capital expenditures in opening a dental practice, such as contracts or leases or other acquisitions of a practice location of at least 30 percent of the value of equipment or supplies necessary to operate a practice; and
- Give priority to those applicants practicing in the areas receiving higher rankings by the Department of Economic Opportunity.

The DOH may also establish by rule a process to verify that funds withdrawn from an account have been used for the purposes authorized.

The Department of Economic Opportunity is directed to rank the dental professional shortage areas and medically underserved areas based on the extent to which limited access to dental care is impeding economic development.

The DOH must develop a marketing plan for the dental care access account initiative with the University of Florida's College of Dentistry, the Nova Southeastern College of Dental Medicine, the Lake Erie College of Osteopathic Medicine's School of Dental Medicine, and the Florida Dental Association.

Beginning in January 2018, the DOH is required to issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include:

- The number of patients served by dentists who receive funding under the bill;
- The number of Medicaid recipients served by dentists who receive funding under the bill;
- The average number of hours worked and patients served per week by dentists who receive funding under the bill;

- The number of dentists in each dental health professional shortage area or medically underserved area who receive funding under the bill;
- The amount and source of local matching funds received by the DOH;
- The amount of state funds awarded to dentists under the bill; and
- A complete accounting of the use of funds, by categories identified by the DOH, including, but not limited to, loans, supplies, equipment, rental property payments, real property purchases, and salary and wages.

The DOH is directed under the bill to adopt rules to require dentists to report information to the DOH that is necessary for the DOH to fulfill the reporting requirement.

The bill's effective date is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SB 234, Floridians living in those areas identified as medically underserved and have little or no access to dental care could benefit from this initiative. The program could bring additional dental professionals to underserved communities. The initiative also permits the grantees to utilize the funds to transition or relocate to new areas and to build or renovate office space in rural communities, which would generate economic growth for small towns and cities. Additionally, dentists who qualify for loan repayment assistance will benefit from a reduction in their student loan debt.

C. Government Sector Impact:

If the program receives an appropriation, the bill will create a fiscal impact to the Department of Health (DOH) in order to implement and manage the dental care access account initiative. The estimated cost is $306,064 for the 2016-2017 fiscal year with a

recurring cost of $277,296 beginning with Fiscal Year 2017-2018. These costs would need to be funded with general revenue.

The initial cost for the electronic benefit transfer contract/vendor is estimated at $100,000 for the first year and $50,000 for the second year. The DOH reports that there is a current EBT system that could be used to implement this system, but it is unknown if it could accommodate all of the provisions of this bill. The EBT systems charge a nominal fee of approximately $0.50 per participant per month as a maintenance fee. The DOH also anticipates a withdrawal fee of at least $1 per transaction when a dentist makes a withdrawal from his or her account.

The number of dentists qualifying for this initiative is unknown.[42] However, the DOH estimates at least 32 dentists could be served annually. The cost of the EBT system would have to be negotiated based on the number of dentists participating in the program.

The DOH also reports the bill will create a workload impact that current staff is unable to meet. Two additional full-time equivalent (FTE) staff members would be required to develop the application process and adopt rules. Staff will also be needed to monitor activity, dentist conduct, dentist membership status, and rulings by the Board of Dentistry on recipients.

The following are the estimated expenditures for the DOH:[43]

Estimated Expenditures (General Revenue)	1st Year	2nd Year Annualization/Recurring
SALARIES		
1 FTE **Health Care Program Analyst @ $40,948 - pay grade 24**	$41,460	$55,280
1 FTE **Senior Management Analyst II @ $46,381 - pay grade 26**	$47,114	$62,818
EXPENSES		
2 FTEs Calculated with standard DOH professional package (limited travel) @ $15,742	$31,484	$23,486
2 docking stations (@ $142 each	$294	$0-
HUMAN RESOURCES SERVICES		
2 FTEs Calculated with standard DOH Central Office package @ $356	$712	$712
Operating Capital Outlay		
Operating Capital Outlay	$0.00	$0.00

[42] Florida Dept. of Health, *Senate Bill Analysis 234*, pp.4-5, (Sept. 24, 2015) (on file with the Senate Committee on Health Policy).
[43] *Id., at p 2.*

Estimated Expenditures (General Revenue)	1st Year	2nd Year Annualization/Recurring
Contractual Services		
Estimate for the development, implementation and maintenance of an electronic benefit transfer (EBT) system	$100,000	$50,000
Marketing Campaign*	$85,000	$85,000
TOTAL ESTIMATED EXPENDITURES	**$306,064**	**$277,296**

*The DOH is also directed to develop a marketing plan with Florida-based dental schools.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.4019 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Gaetz

1-00273-16 2016234__

A bill to be entitled

An act relating to dental care; creating s. 381.4019, F.S.; establishing a joint local and state dental care access account initiative, subject to the availability of funding; authorizing the creation of dental care access accounts; specifying the purpose of the initiative; defining terms; providing criteria for the selection of dentists for participation in the initiative; providing for the establishment of accounts; requiring the Department of Health to implement an electronic benefit transfer system; providing for the use of funds deposited in the accounts; requiring the department to distribute state funds to accounts, subject to legislative appropriations; authorizing the department to accept contributions from a local source for deposit in a designated account; limiting the number of years that an account may remain open; providing for the immediate closing of accounts under certain circumstances; authorizing the department to transfer state funds remaining in a closed account at a specified time and to return unspent funds from local sources; requiring a dentist to repay funds in certain circumstances; authorizing the department to pursue disciplinary enforcement actions and to use other legal means to recover funds; requiring the department to establish by rule application procedures and a process to verify the use of funds withdrawn from a dental care access account; requiring the department

1-00273-16 2016234__

to give priority to applications from dentists practicing in certain areas; requiring the Department of Economic Opportunity to rank dental health professional shortage areas and medically underserved areas; requiring the Department of Health to develop a marketing plan in cooperation with certain dental colleges and the Florida Dental Association; requiring the Department of Health to annually submit a report with certain information to the Governor and the Legislature; providing rulemaking authority to require the submission of information for such reporting; providing an effective date.

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

Section 1. Section 381.4019, Florida Statutes, is created to read:

381.4019 Dental care access accounts.—Subject to the availability of funds, the Legislature establishes a joint local and state dental care access account initiative and authorizes the creation of dental care access accounts to promote economic development by supporting qualified dentists who practice in dental health professional shortage areas or medically underserved areas or who treat a medically underserved population. The Legislature recognizes that maintaining good oral health is integral to overall health status and that the good health of residents of this state is an important contributing factor in economic development. Better health, including better oral health, enables workers to be more

productive, reduces the burden of health care costs, and enables children to improve in cognitive development.

(1) As used in this section, the term:

(a) "Dental health professional shortage area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(b) "Department" means the Department of Health.

(c) "Medically underserved area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(d) "Public health program" means a county health department, the Children's Medical Services Network, a federally qualified community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program as designated by the department.

(2) The department shall develop and implement a dental care access account initiative to benefit dentists licensed to practice in this state who demonstrate, as required by the department by rule:

(a) Active employment by a public health program located in a dental health professional shortage area or a medically underserved area; or

(b) A commitment to opening a private practice in a dental health professional shortage area or a medically underserved area, as demonstrated by the dentist residing in the designated area, maintaining an active Medicaid provider agreement, enrolling in one or more Medicaid managed care plans, expending sufficient capital to make substantial progress in opening a

dental practice that is capable of serving at least 1,200 patients, and obtaining financial support from the local community in which the dentist is practicing or intending to open a practice.

(3) The department shall establish dental care access accounts as individual benefit accounts for each dentist who satisfies the requirements of subsection (2) and is selected by the department for participation. The department shall implement an electronic benefit transfer system that enables each dentist to spend funds from his or her account for the purposes described in subsection (4).

(4) Funds contributed from state and local sources to a dental care access account may be used for one or more of the following purposes:

(a) Repayment of dental school student loans.

(b) Investment in property, facilities, or equipment necessary to establish and operate a dental office consisting of no fewer than two operatories.

(c) Payment of transitional expenses related to the relocation or opening of a dental practice which are specifically approved by the department.

(5) Subject to legislative appropriation, the department shall distribute state funds as an award to each dental care access account. An individual award must be in an amount not more than $100,000 and not less than $10,000, except that a state award may not exceed 3 times the amount contributed to an account in the same year from local sources. If a dentist qualifies for a dental care access account under paragraph (2)(a), the dentist's salary and associated employer

expenditures constitute a local match and qualify the account for a state award if the salary and associated expenditures do not come from state funds. State funds may not be included in a determination of the amount contributed to an account from local sources.

(6) The department may accept contributions of funds from a local source for deposit in the account of a dentist designated by the donor.

(7) The department shall close an account no later than 5 years after the first deposit of state or local funds into that account or immediately upon the occurrence of any of the following:

(a) Termination of the dentist's employment with a public health program, unless, within 30 days of such termination, the dentist opens a private practice in a dental health professional shortage area or medically underserved area.

(b) Termination of the dentist's practice in a designated dental health professional shortage area or medically underserved area.

(c) Termination of the dentist's participation in the Florida Medicaid program.

(d) Participation by the dentist in any fraudulent activity.

(8) Any state funds remaining in a closed account may be awarded and transferred to another account concurrent with the distribution of funds under the next legislative appropriation for the initiative. The department shall return to the donor on a pro rata basis unspent funds from local sources which remain in a closed account.

(9) If the department determines that a dentist has withdrawn account funds after the occurrence of an event specified in subsection (7), has used funds for purposes not authorized in subsection (4), or has not remained eligible for a dental care access account for a minimum of 2 years, the dentist shall repay the funds to his or her account. The department may recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

(10) The department shall establish by rule:

(a) Application procedures for dentists who wish to apply for a dental care access account. An applicant may demonstrate that he or she has expended sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients by documenting contracts for the purchase or lease of a practice location and providing executed obligations for the purchase or other acquisition of at least 30 percent of the value of equipment or supplies necessary to operate a dental practice. The department may limit the number of applicants selected and shall give priority to those applicants practicing in the areas receiving higher rankings pursuant to subsection (11). The department may establish additional criteria for selection which recognize an applicant's active engagement with and commitment to the community providing a local match.

(b) A process to verify that funds withdrawn from a dental care access account have been used solely for the purposes described in subsection (4).

(11) The Department of Economic Opportunity shall rank the dental health professional shortage areas and medically

underserved areas of the state based on the extent to which limited access to dental care is impeding the areas' economic development, with a higher ranking indicating a greater impediment to development.

(12) The department shall develop a marketing plan for the dental care access account initiative in cooperation with the University of Florida College of Dentistry, the Nova Southeastern University College of Dental Medicine, the Lake Erie College of Osteopathic Medicine School of Dental Medicine, and the Florida Dental Association.

(13)(a) By January 1 of each year, beginning in 2018, the department shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include:

1. The number of patients served by dentists receiving funding under this section.

2. The number of Medicaid recipients served by dentists receiving funding under this section.

3. The average number of hours worked and patients served in a week by dentists receiving funding under this section.

4. The number of dentists in each dental health professional shortage area or medically underserved area receiving funding under this section.

5. The amount and source of local matching funds received by the department.

6. The amount of state funds awarded to dentists under this section.

7. A complete accounting of the use of funds by categories identified by the department, including, but not limited to,

loans, supplies, equipment, rental property payments, real property purchases, and salary and wages.

(b) The department shall adopt rules to require dentists to report information to the department which is necessary for the department to fulfill its reporting requirement under this subsection.

Section 2. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 318 (508372)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Richter
SUBJECT:	Regulation of Oil and Gas Resources
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Howard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 318 revises Florida's oil and gas regulations to define the term "high-pressure well stimulation" and requires a separate permit for the performance of high-pressure well stimulations. The bill directs the Department of Environmental Protection (DEP) to conduct a study analyzing the potential impacts that high-pressure well stimulations may have on Florida's underlying geologic features. The bill prohibits permits for high-pressure well stimulations from being issued until the DEP adopts rules regulating high-pressure well stimulations and such rules take effect.

Additionally, the bill:

- Preempts to the state all matters relating to the regulation of the exploration, development, production, processing, storage, and transportation of oil and gas;
- Requires inspections during the testing of blowout preventers, the pressure testing of the casing and casing shoe, and the integrity testing of cement plugs in plugging and abandonment operations;
- Requires notice to be given, a fee to be paid, and a permit to be granted before performing a high-pressure well stimulation;
- Requires the DEP to consider groundwater contamination as a result of high-pressure well stimulations and public policy when reviewing a permit application for high-pressure well stimulations;

- Specifies that a permit may be denied or specific permitting conditions may be applied based on the past history of prior adjudicated, uncontested, or settled violations committed by the permit applicant or an affiliated entity of the applicant of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state;
- Clarifies the inspection authority of the DEP;
- Requires the permit applicant to provide surety to the DEP that the high-pressure well stimulation will be conducted in a safe and environmentally compatible manner;
- Increases the civil penalty from $10,000 per day to $25,000 per day for violations; and
- Designates FracFocus as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed.

The bill provides a $1 million nonrecurring appropriation from the General Revenue Fund to the DEP to conduct a study on high-pressure well stimulations. According to the DEP, the increased workload related to the regulatory and rulemaking process can be handled within existing resources. The remaining fiscal impact of the bill is indeterminate.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Production of conventional versus unconventional oil and gas resources: the use of well stimulation techniques

Conventional oil and gas resources are found in permeable sandstone and carbonate reservoirs.[1] To extract conventional resources, wells have historically been drilled vertically, straight down into a rock formation. Whereas conventional resources are found in concentrated underground locations, unconventional resources are highly dispersed through impermeable or "tight" rock formations such as shales and tight sands. To extract unconventional resources, drilling has shifted from vertical to horizontal or directional away from the reservoir to the source rock, and well stimulation techniques have been developed to increase the production at such oil or gas wells. The profitable extraction of unconventional resources is relatively new.[2]

Well stimulation techniques are used in the production of both conventional and unconventional resources. The techniques can be focused solely on the wellbore for maintenance and remedial purposes or can be used to increase production from the reservoir.[3] The three most commonly used well stimulation techniques include matrix acidizing, acid fracturing, and hydraulic fracturing. Dating back to 1895, matrix acidizing is the oldest well stimulation technique. It involves pumping acid into the well at a pressure that does not exceed the fracture gradient to dissolve some of the rock to bypass wellbore damage or to stimulate carbonate formations.[4] Acid

[1] Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, pg. 2 (Apr. 22, 2015), *available at* https://www.fas.org/sgp/crs/misc/R43148.pdf.
[2] *Id*. at 3.
[3] California Council on Science and Technology Lawrence Berkeley National Laboratory, *An Independent Assessment of Well Stimulation in California* (CA Study), Vol. 1, Well stimulation technologies and their past, present, and potential future use in California, January 2015, pg. 14, *available at* http://ccst.us/publications/2015/2015SB4-v1.php.
[4] *Id*. at 69.

fracturing is a well stimulation technique that involves pumping acidic fluids into a well at a pressure that fractures the rock. The acid etches the walls of the fracture so the fractures remain open after the pressure is released. These types of acid stimulations are preferred in carbonate reservoirs.[5]

Hydraulic fracturing was developed in the 1940s to increase production of conventional resources. While the technique is not new, the composition of the fracturing fluids has evolved over time. Initially the technique used very little water and relied on a mixture of petroleum compounds, such as napalm and diesel fuels.[6] Modern hydraulic fracturing involves a fracturing fluid that is composed of a base fluid, in most cases water; additives, each designed to serve a particular function; and a proppant, such as sand, to hold the fractures open. The composition of the fracturing fluid varies depending on the property of the reservoir rock, specifically the rock's permeability and brittleness.[7] A hydraulic fracturing operation at a horizontal well involves four stages. The first is the "stage" during which a portion of the well is isolated to focus the fracture fluid pressure. The second is the "pad" in which fracture fluid is injected without proppant to initiate and propagate the fracture. The proppant is then added to keep the fractures open. The third stage is the "flush" during which fluid is injected without proppant to push any remaining proppant into the fractures. The fourth is the "flowback" during which the hydraulic fracturing fluids are removed and the fluid pressure dissipates.[8]

The Environmental Protection Agency (EPA) estimates that between 25,000-30,000 new wells were drilled and hydraulically fractured annually in the United States between 2011 and 2014.[9] Horizontal or directional drilling techniques in conjunction with hydraulic fracturing has led to a surge in domestic production of oil and gas resources in the recent decade and, in 2014, the United States was the world's top producer of petroleum and natural gas hydrocarbons.[10]

Production of oil and gas resources in Florida

Northwest and South Florida are the major oil and gas producing areas in the state. The first producing oil well was discovered in 1943 at a wellsite located in Big Cypress Preserve.[11] It was not until 1970 that oil and gas resources were first discovered in Northwest Florida. There are

[5] *Id*. at 56.
[6] Gallegos, T.J., and Varela, B.A., *Trends in hydraulic fracturing distributions and treatment fluids, additives, proppants, and water volumes applied to wells drilled in the United States from 1947 through 2010—Data analysis and comparison to the literature: U.S. Geological Survey Scientific Investigations Report 2014–5131*, pg. 7 (2015), *available at* http://pubs.usgs.gov/sir/2014/5131/pdf/sir2014-5131.pdf.
[7] CA Study at 48.
[8] *Id*. at 42.
[9] U.S. Environmental Protection Agency (EPA), *DRAFT An Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, Executive Summary*, ES-5 (2015), *available at* http://www2.epa.gov/sites/production/files/2015-07/documents/hf_es_erd_jun2015.pdf. This draft document is undergoing peer review by the Scientific Advisory Board (SAB) Hydraulic Fracturing Research Advisory Panel. A SAB Draft Report is available at http://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentBOARD/f7a9db9abbac015785257e540052dd54!OpenDocument&TableRow=2.2#2.
[10] U.S. Energy Information Administration (EIA), *Today in Energy*, http://www.eia.gov/todayinenergy/detail.cfm?id=20692 (last visited Jan. 11, 2016).
[11] American Oil & Gas Historical Society, *First Florida Oil Well*, http://aoghs.org/states/first-florida-oil-well/ (last visited Jan. 11, 2016).

seven active fields in South Florida, specifically in Lee, Hendry, Collier, and Dade Counties, and three active fields in Northwest Florida, specifically in Escambia and Santa Rosa Counties.[12] While geologists believe that there may be large oil and natural gas deposits off Florida's western coast, the state enacted a drilling ban for state waters in 1990 and, in 2006, Congress banned the leasing of federal offshore blocks within 125 miles of Florida's western coast until at least 2022.[13]

There are approximately 163 active wells in Florida.[14] The Department of Environmental Protection's (DEP) 2014 Annual Production Report totaled natural gas production at 728,884 million cubic feet (MMcf) and oil production totals at 614,668 thousand barrels (MBbls).[15]

Proven oil and gas reserves both in Northwest and South Florida are composed of carbonate formations and reservoirs that have relatively high permeability.[16] Because acid easily dissolves carbonate materials, techniques such as matrix acidizing and acid fracturing are preferred in carbonate reservoirs.[17] In December 2013, the DEP received a workover notice proposing use of an enhanced extraction procedure at a well site located in Collier County, Florida. The DEP requested that the company not complete the proposed workover, until additional review could be performed.[18] The company commenced with the workover procedure, and the DEP issued a cease and desist order. After failing to comply with the order, the company withdrew its permit application.[19] The DEP reported that the last use of hydraulic fracturing on record was in the Jay oilfield in 2003.[20]

Regulation of well stimulation techniques

Federal

There is limited direct federal regulation over the use of well stimulation techniques. In 2005, Congress passed the Energy Policy Act amending the Safe Water Drinking Act (SWDA) and the Clean Water Act (CWA).[21] The SWDA was amended to revise the definition of the term "underground injection" to specifically exclude the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations. The CWA was amended to characterize oil and gas exploration and production as "construction activities,"

[12] DEP, *Oil and Gas Annual Production Reports, 2014*, *available at* http://www.dep.state.fl.us/water/mines/oil_gas/production.htm.
[13] EIA, Florida State Profile and Energy Estimates, *Analysis*, http://www.eia.gov/state/analysis.cfm?sid=FL (last visited Jan. 11, 2016). *See also*, s. 377.242(1), F.S.
[14] Email from Andrew Ketchel, Director, Office of Legislative Affairs, DEP (Jan. 7, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).
[15] DEP, *Oil and Gas Annual Production Reports, 2014*, *available at* http://www.dep.state.fl.us/water/mines/oil_gas/production.htm.
[16] DEP, *Hydraulic Fracturing Background and Recommendations* (Sept. 29, 2015) *available at* http://archive.news-press.com/assets/pdf/A4195556107.PDF.
[17] California Council on Science and Technology Lawrence Berkeley National Laboratory, *An Independent Assessment of Well Stimulation in California* (CA Study), Vol. 1, Well stimulation technologies and their past, present, and potential future use in California, January 2015, pg. 56 and pg. 69, *available at* http://ccst.us/publications/2015/2015SB4-v1.php.
[18] DEP, *Collier Oil Drilling*, http://www.dep.state.fl.us/secretary/oil/collier_oil.htm (last visited Jan. 11, 2016).
[19] *Id*.
[20] DEP, *Frequently Asked Questions Regarding the Oil and Gas Permitting Process*, http://www.dep.state.fl.us/water/mines/oil_gas/docs/faq_og.pdf (last visited Jan. 11, 2016).
[21] Energy Policy Act of 2005, H.R. 6, 109th Cong. (2005-2006).

thereby removing these operations from the scope of the CWA.[22] Thus, the Energy Policy Act effectively exempted non-diesel hydraulic fracturing from federal law.[23]

In an attempt to regulate hydraulic fracturing on federal and tribal lands, the Bureau of Land Management (BLM) in March 2015, published final rules governing hydraulic fracturing.[24] The rules were to take effect on June 24, 2015, however, the United States District Court for the District of Wyoming granted a preliminary injunction, holding that the BLM lacked the authority to regulate hydraulic fracturing.[25] The BLM is enjoined from enforcing the final rules pending the finality of the rule challenge.

While direct regulation over well stimulation techniques at the federal level is limited, there are several federal statutes that have been applied to regulate the impacts of oil and gas extraction more generally. The Oil and Gas Extraction Effluent Guidelines and Standards regulate wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities.[26] The regulations apply to conventional and unconventional extraction with the exception of extractions of coalbed methane.[27] These standards are incorporated in the National Pollutant Discharge Elimination System (NPDES).

Because it is possible that oil and gas activities could result in the release of hazardous substances into the environment at or under the surface in a manner that may endanger public health or the environment, these activities are regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[28] While any recovered petroleum or natural gas is exempt, other hazardous substances that result from oil or gas production, including fracturing fluids, fall under the act and if a release were to occur, the facility owner and operator could face liability under CERCLA.[29]

To ensure that employees who may be exposed to hazardous chemicals in the workplace are aware of the chemicals' potential dangers, manufacturers and importers must obtain or develop

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[22] The EPA rule implementing the CWA amendment was challenged and the Ninth Circuit Court of Appeals vacated the rule. Oil and gas construction facilities remain subject to stormwater permitting requirements, as well as, NPDES permit requirements. *See* William J. Brady, *Hydraulic Fracturing Regulation in the United States: The Laissez-faire approach of the Federal government and varying state regulations* at 8 (Unv. of Denver Sturm College of Law), *available at* http://www.law.du.edu/documents/faculty-highlights/Intersol-2012-HydroFracking.pdf.

[23] Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009), *available at* http://law.uh.edu/faculty/thester/courses/Emerging%20Tech%202011/Wiseman%20on%20Fracking.pdf.

[24] Under the final BLM regulations, the term "hydraulic fracturing" is defined as "those operations conducted in an individual wellbore designed to increase the flow of hydrocarbons from the rock formation to the wellbore through modifying the permeability of reservoir rock by applying fluids under pressure to fracture it. Hydraulic fracturing does not include enhanced secondary recovery such as water flooding, tertiary recovery, recovery through steam injection, or other types of well stimulation operations such as acidizing."

[25] State of Wyo. vs. U.S. Dept. of the Int., No. 2: 15-CB-043-SWS (D. Wyo. Sept. 30, 2015) (order granting preliminary injunction), *available at* http://www.wyd.uscourts.gov/pdfforms/orders/15-cv-043%20130%20order.pdf.

[26] EPA, *Oil and Gas Extraction Effluent Guidelines*, http://www.epa.gov/eg/oil-and-gas-extraction-effluent-guidelines (last visited Jan. 11, 2016).

[27] *Id*.

[28] Adam Vann, Brandon J. Murrill, & Mary Tiemann, Cong. Research Serv., R 43152, *Hydraulic Fracturing: Selected Legal Issues*, pg. 12 (Sept. 26, 2014), *available at* https://www.fas.org/sgp/crs/misc/R43152.pdf.

[29] *Id*. at 13.

Material Safety Data Sheets (MSDS) for hydraulic fracturing chemicals that are hazardous according to the Occupational Safety and Health Administration (OSHA) standards. MSDS sheets must be maintained for hazardous chemicals at each job site and must, at a minimum, include the chemical names of substances that are considered hazardous under OSHA regulations.[30]

State

States have primary jurisdiction and authority over the regulation of oil and gas activities. Almost all states with economically viable production wells have extensive regulatory programs in place for permitting and monitoring oil and gas activities. Recent advances in technology and the widespread use of well stimulation techniques, particularly hydraulic fracturing, have motivated some states to update and revise their oil and gas regulations to specifically address such techniques or to ban certain techniques altogether.[31]

The DEP has regulatory authority over oil and gas resources in Florida. The Division of Water Resource Management (Division) within DEP oversees the permitting process for drilling production and exploration. The DEP adopted Rule Chapters 62C-25 through 62C-30 of the Florida Administrative Code to implement and enforce the regulation of oil and gas resources. The Division has jurisdiction and authority over all persons and property necessary to administer and enforce all laws relating to the conservation of oil and gas.[32] Drilling and exploration is not authorized or is subject to local governmental approval in tidal waters, near improved beaches, and within municipal boundaries.[33]

When issuing permits for oil or gas exploration or extraction, the Division is required to consider the nature, character, and location of the lands involved; the nature, type, and extent of ownership of the applicant; and the proven or indicated likelihood of the presence of oil, gas, or related minerals on a commercially viable basis.[34] The DEP is required to ensure that all precautions are taken to prevent the spillage of oil or other pollutants in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products.[35] Additionally, the DEP is authorized to issue rules to require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.[36]

Before any person begins work other than environmental assessments or surveying at the site of a proposed drilling operation, a permit to drill is required and a preliminary site inspection must be conducted by the DEP.[37] An application for a permit to drill must include a proposed casing

[30] *Id*. at 22.
[31] Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009). *See also* State of Wyo. vs. U.S. Dept. of the Int., No. 2: 15-CB-043-SWS, pg. 40 (D. Wyo. Sept. 30, 2015) listing Wyoming, Colorado, Utah, North Dakota, Alaska, Illinois, Michigan, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas, California, Montana, and Nevada as states with regulations in places addressing hydraulic fracturing.
[32] Section 377.21(1), F.S.
[33] Section 377.24, F.S.
[34] Section 377.241, F.S.
[35] Section 377.22, F.S.
[36] *Id*.
[37] Fla. Admin. Code R. 62C-26.003.

and cementing program and a location plat survey.[38] Each drilling permit is valid for one year and may be extended for an additional year.[39] Before a well is used for its intended purpose, a permit to operate the well must be obtained.[40] Operating permits are valid for the life of the well; however, every five years the DEP is required to perform a comprehensive field inspection and the permit must be re-certified.[41] Each application and subsequent re-certification must include the appropriate fee; bond or security coverage; a spill prevention and cleanup plan; flowline specification and an installation plan; containment facility certification; and additional reporting and data submissions, such as a driller's logs and monthly well reports.[42] Before a permit is granted, the owner or operator is required to post a bond or other form of security for each well. The amounts vary depending upon the well depth.[43] In lieu of posting a bond or security for each well, the owner or operator may file a blanket bond for multiple operations in the amount of $1,000,000, which may cover up to ten wells.[44]

A separate permit is not required for the performance of well stimulation techniques, the techniques are regulated as workovers.[45] Rule 62C-25.002(61) of the Florida Administrative Code defines the term "workover" as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates." An operator is required to notify the DEP before commencing a workover procedure and must submit a revised Well Record[46] to the DEP within 30 days after the workover.[47]

A person that violates any statute, rule, regulation, order, or permit of the Division relating to the regulation of oil or gas resources or who refuses inspection by the Division is liable for damages caused to the air, waters, or property of the state; for reasonable costs in tracing the source of the discharge, in controlling and abating the source and the pollutants; and in restoring the air, waters, and property.[48] Such persons are also subject to judicial imposition of a civil penalty up to $10,000 for each offense.[49] Each day during any portion of which a violation occurs constitutes a separate offense.[50]

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[38] *Id*.
[39] *Id*.
[40] Fla. Admin. Code R. 62C-26.008.
[41] Fla. Admin. Code Rules 62C-25.006 and 62C-26.008.
[42] Fla. Admin. Code Rule 62C-26.008.
[43] Fla. Admin. Code Rule 62C-26.002.
[44] *Id*.
[45] *See e.g.*, s. 377.22, F.S., requiring the Division to adopt rules to "regulate the shooting, perforating, and chemical treatment of wells" and to "regulate secondary recovery methods, in the introduction of gas, air, water, or other substance in producing formations." *See also*, s. 377.26, F.S., requiring the Division to "take into account technological advances in drilling and production technology, including, but not limited to, horizontal well completions in the producing formation using directional drilling methods."
[46] Fla. Admin. Code R. 62C-26.008.
[47] Fla. Admin. Code R. 62C-29.006.
[48] Section 377.37(1)(a), F.S.
[49] *Id*.
[50] *Id*.

Local

As most states with oil and gas interests have extensive regulatory programs governing oil and gas activities, the issue relating to what extent local governments may regulate oil and gas activities within their boundaries has arisen. In some areas local governments have banned or limited certain well stimulation techniques within their boundaries with varying success. In Colorado a number of municipalities passed bans on hydraulic fracturing within their city limits, but state courts have overturned the bans recognizing that the state's interest in the efficient and fair development of its resources may otherwise be threatened by inconsistent ordinances.[51] In Pennsylvania similar bans have been passed, and Pennsylvania state courts have held that municipalities retain their authority to limit oil and gas development within their borders, effectively authorizing them to regulate the "where, but not the how, of hydrocarbon recovery."[52]

While cities and counties do not operate oil and gas permitting programs in Florida, some through their land use regulations or zoning ordinances require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.[53] When authorizing oil and gas activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.[54]

Section 377.24(5), F. S., restricts the DEP from issuing a permit for drilling within the corporate limits of a municipality unless the municipality adopts a resolution approving the permit. Three municipalities, Estero, Bonita Springs, and Coconut Creek have banned well stimulation techniques by ordinance.[55] Additionally, many counties and cities have passed resolutions supporting various types of bans and moratoriums relating to well stimulation techniques.[56]

Environmental Concerns

There are a variety of environmental concerns relating to well stimulation techniques. Potential impacts and concerns include: groundwater or surface water contamination; stress on water supplies; inadequate wastewater management and disposal; and air quality degradation.[57] Because well stimulation techniques are applied to so many types of formations using a variety of methods and fluids, environmental impacts vary depending on factors such as toxicity of the

[51] David L. Schwan, *Preemption Update: Local Attempts to Preempt State Regulation of Hydraulic Fracturing*, pg. 5, *available at* http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2015-joint-cle/written_materials/01_fracked_up_preemption_update.authcheckdam.pdf/.
[52] *Id*. at 6.
[53] Florida League of Cities, *Legislative Issue Briefs, Hydraulic Fracturing (Fracking)*, http://www.floridaleagueofcities.com/Assets/Files/Advocacy/2016_IB_Fracking.pdf (last visited Jan. 7, 2016). *Also see e.g.*, Lee County's Land Development Code s. 34-145(c).
[54] *Id*.
[55] Ordinance No. 2015-19 bans well stimulation within and below the corporate boundaries of the Village of Estero; Article IV, Section 13-1000 of Coconut Creek's Land Development Code bans well stimulation in Coconut Creek; and Chapter 4, Article VI, Division 15, Section 4-1380 of Bonita Spring's Land Development Code bans well stimulation in Bonita Springs, Florida.
[56] See Food & Water Watch, *Local Regulations Against Fracking*, http://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking#florida (last visited Jan. 7, 2016).
[57] EPA, Natural Gas Extraction - Hydraulic Fracturing, http://www.epa.gov/hydraulicfracturing (last visited Jan. 11, 2016).

fluid used; the closeness of the fracture zone to underground drinking water; the existence of a barrier between the fracture formation and other formations; and how wastewater is disposed.[58]

Water Quality

A major environmental concern is the impact well stimulation techniques may have on drinking water quality. The EPA estimated that 6,800 sources of drinking water are within one mile of a well that has been hydraulically fractured.[59] Sources of drinking water may be contaminated through the release of gas-phase hydrocarbons, in what is known as stray gas migration, through the movement of liquid or gases out of the well if the well casing or cementing is too weak or if it fails.[60] While concerns related to inadequate well casing or cementing are not unique to hydraulic fracturing, horizontally drilled, hydraulically fractured wells pose more production challenges because they are subject to greater pressures.[61]

Mitigating measures, such as extending the casing farther below groundwater resources and pressure testing the well casing before the injection of fluids, may work to prevent well casing failures. Blowout preventers also help control and prevent pressure build-ups. Furthermore, hydraulically fractured wells in shale formations are usually drilled deeper than vertical wells and, therefore, the vertical separation between the formation and the drinking water resource is greater.[62] Thousands of feet of rock layers typically overlay the produced portion of shale and serve as a barrier to contamination.[63] The vast majority of Florida's public water supply is obtained from groundwater sources, specifically from the Floridan aquifer system which underlies the state of Florida.[64] Areas in which oil and gas have been extracted have an upper confining unit that is generally greater than 100 feet, which serves as a barrier to contamination.[65]

Fractures created during hydraulic fracturing can intersect nearby wells or their fracture networks, resulting in the flow of fluids into those wells and to underground drinking water resources. These "frac-hits" are more likely to occur if wells are close to each other or are on the same well pad.[66] In Florida, horizontal wells deeper than 7,000 feet have more stringent spacing requirements.[67]

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[58] Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009), *available at* http://law.uh.edu/faculty/thester/courses/Emerging%20Tech%202011/Wiseman%20on%20Fracking.pdf.

[59] U.S. Environmental Protection Agency (EPA), *DRAFT Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, Executive Summary*, pg. 6 (2015), *available at* http://www2.epa.gov/sites/production/files/2015-07/documents/hf_es_erd_jun2015.pdf.

[60] Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8334-8348, 8336 (2014).

[61] Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, pg. 8 (Apr. 22, 2015), *available at* https://www.fas.org/sgp/crs/misc/R43148.pdf.

[62] *Id*. at 7.

[63] *Id*.

[64] DEP, *Aquifers*, https://fldep.dep.state.fl.us/swapp/Aquifer.asp (last visited Jan. 11, 2016).

[65] U.S. Geological Survey (USGS), *Conceptual Model of the Floridan*, http://fl.water.usgs.gov/floridan/conceptual-model.html (last visited Dec. 18, 2015).

[66] U.S. Environmental Protection Agency (EPA), *DRAFT Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, Executive Summary*, ES-16 (2015).

[67] Fla. Admin. Code R. 62C-26.004(5).

Surface water contamination may occur as a result of the inadequate storage and disposal of produced waters, which includes fractured fluids or "flowback." Approximately 10-40 percent of the volume of the injected fracturing fluids returns to the surface after hydraulic fracturing.[68] In most produced waters the concentrations of toxic elements, such as radioactive radium, are positively correlated with salinity, which suggests that many of the potential water quality issues associated with produced waters may be attributable to the geochemistry of the brines within the shale formations.[69] In Florida, all spills of waste material must be immediately reported to the Division and the appropriate federal agencies, and the owner or operator is responsible for the costs of cleanup or other damage incurred by the state.[70]

Water Supply

The amount of water used during the performance of a well stimulation depends on the well depth, formation geology, and the composition of the fracturing fluid. In some cases, over 90 percent of the fracturing fluid is made up of water and each hydraulically fractured well could require thousands to millions of gallons.[71] While the total water use for well stimulation techniques is relatively low compared to other water users,[72] wells that are good candidates for such techniques are usually located near the same source and as a result the collective impact of water withdrawals could result in increased competition among users.[73] To decrease the competition among users, some states have implemented pilot projects evaluating the feasibility of reusing produced waters or other brackish or wastewaters.[74]

Wastewater Management and Disposal

As the use of hydraulic fracturing has increased, so has the volume of wastewaters that are generated. Produced water is the water that comes to the surface naturally, as part of the oil and natural gas production process, and for a hydraulically fractured well, includes flowback. The vast majority of produced water is disposed of using injection wells. Injection wells are permitted under the Underground Injection Control (UIC) program.[75] The goal of the UIC program is the effective isolation of injected fluids from underground sources of drinking water.[76] Class II injection wells are designed to inject fluids associated with the production of oil and natural gas or fluids used to enhance hydrocarbon recovery. As unconventional oil and gas wells are being drilled at rapid rates, space for underground injection wells is becoming limited in some areas. Another issue that is developing with the increase in injection wells is the concern

[68] Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8334-8348, 8340 (2014).
[69] *Id*.
[70] Section 377.371, F.S.
[71] EPA, *Executive Summary* at 6.
[72] Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8348, 8343 (2014).
[73] Hannah Wiseman, *Risk and Response in Fracturing Policy*, 84 Unv. of Col. L. Rev. 729-817, 776 (2009), *available at* http://lawreview.colorado.edu/wp-content/uploads/2013/11/11.-Wiseman_For-Printer_s.pdf.
[74] *Id*. at 770.
[75] EPA, Underground Injection Control Program, http://water.epa.gov/type/groundwater/uic/ (last visited Jan. 11, 2016).
[76] *Id*.

that the deep-well disposal of oil and gas production wastewater is responsible for seismic activity in certain areas.[77] The Oklahoma Geological Survey determined that the primary suspected source of triggered seismicity is from the injection of produced water associated with oil and gas production in disposal wells.[78]

Additionally, in some states the produced waters are being sent to treatment facilities that are not equipped to treat wastewater from hydraulically fractured wells.[79] In April 2015, the EPA under the authority of the Clean Water Act published proposed rules for the oil and gas extraction category which would set pretreatment standards for discharges of wastewater from unconventional oil and gas operations to a publicly owned treatment works plant.[80]

Air Quality

The key emissions associated with unconventional oil and natural gas production include methane, volatile organic compounds (VOCs), nitrogen oxides, sulfur dioxide, particulate matter, and various hazardous air pollutants.[81] In 2012, the EPA issued New Source Performance Standards that require reductions in emissions from VOCs from hydraulically fractured natural gas wells.[82] These rules were the first federal air standards for natural gas wells that were hydraulically fractured.[83] In August 2015, the EPA proposed additional requirements that would complement the 2012 standards, including requiring operators of hydraulically fractured oil wells, in addition to natural gas wells, to use "green completion" and a proposal to require owners or operators to find and repair leaks, which can be significant causes of methane and VOC pollution.[84]

Chemical Disclosure

Fracturing fluids vary in composition based on a variety of factors, including, but not limited to, the geologic type of formation being fractured, temperature, the sensitivity of the reservoir system to water.[85] Fracturing fluids are commonly composed of water, sand, a friction reducer, acid, biocide, a breaker, a stabilizer, a cross linker, gel, a non-emulsifier, a scale inhibitor, a surfactant, a pH adjuster agent, a gelling agent, and an iron control.[86] FracFocus is a publicly

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[77] *See* Peter Folger & Mary Tiemann, Cong. Research Serv., R 43836, *Human-Induced Earthquakes from Deep-Well Injection: A Brief Overview*, (May 12, 2015) *available at* https://www.fas.org/sgp/crs/misc/R43836.pdf.
[78] Oklahoma Geological Survey, *Statement on Oklahoma Seismicity* (Apr. 21, 2015), http://wichita.ogs.ou.edu/documents/OGS_Statement-Earthquakes-4-21-15.pdf (last visited Jan. 12, 2016).
[79] Wiseman, *Risk and Response in Fracturing Policy* at 768-769.
[80] EPA, *Unconventional Extraction in the Oil and Gas Industry*, http://www2.epa.gov/eg/unconventional-extraction-oil-and-gas-industry (last visited Jan. 11, 2016).
[81] Ratner & Tiemann, R 43148 at 9.
[82] EPA, *Oil and Natural Gas Air Pollution Standards, Regulatory Actions*, http://www3.epa.gov/airquality/oilandgas/actions.html (last visited Jan. 7, 2016).
[83] *Id*.
[84] *EPA, Overview of Final Amendments to Air Regulations for the Oil and Natural Gas Industry: Fact Sheet*, August 2015, http://www3.epa.gov/airquality/oilandgas/pdfs/og_fs_081815.pdf.
[85] Gallegos, T.J., and Varela, B.A., *Trends in hydraulic fracturing distributions and treatment fluids, additives, proppants, and water volumes applied to wells drilled in the United States from 1947 through 2010—Data analysis and comparison to the literature: U.S. Geological Survey Scientific Investigations Report 2014–5131*, pg. 1 (2015), *available at* http://pubs.usgs.gov/sir/2014/5131/pdf/sir2014-5131.pdf.
[86] FracFocus Chemical Disclosure Registry, *Why Chemicals are Used*, https://fracfocus.org/chemical-use/why-chemicals-are-used (last visited Jan. 11, 2016).

accessible database managed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission and was created to provide public access to reported chemicals used for hydraulic fracturing.[87] There are 106,132 well sites registered and the website lists over 50 chemicals that are used most often.[88] In February 2015, the Ground Water Protection Council reported that 27 states require chemical disclosure relating to hydraulic fracturing operations, and at least 18 of these states allow or require companies to use FracFocus.[89]

Because unique formulas are used based on the geology of each formation, the exact contents and proportions of various chemicals within the mixtures may not be common knowledge within the industry and could possibly be claimed as trade secret.[90] Therefore, while some states require specific fracturing fluid compositions to be disclosed to the state agencies, confidentiality provisions are provided to protect such trade secret information.

III. Effect of Proposed Changes:

Section 1 amends s. 377.06, F.S., to preempt all matters relating to the regulation of the exploration, development, production, processing, storage, and transportation of oil and gas to the state. The bill declares that any such existing ordinance or regulation regulating such matters is void. The bill authorizes a county or municipality to adopt and enforce zoning or land use requirements which affect the use of property for the exploration, development, production, processing, storage or transportation of oil and gas, except zoning or land use requirements that affect geophysical operations, so long as such zoning or land use requirements do not impose a moratorium on, effectively prohibit, or inordinately burden one or more of these activities on a subject property. Geophysical operations are activities, such as seismic surveys using off-road vibratory vehicles, specialized microphones, or explosives, which are utilized in the exploration for oil, gas, or other minerals.[91]

Currently, three municipalities have banned well stimulation techniques within their boundaries and under the bill such ordinances would be declared void.

Section 2 amends s. 377.19, F.S., to define the term "high-pressure well stimulation" as "all stages of a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore." The bill specifies that the term does not include "well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore."

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[87] *Id*.
[88] *Id*.
[89] Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, pg. 12 (Apr. 22, 2015), *available at* https://www.fas.org/sgp/crs/misc/R43148.pdf.
[90] Hannah Wiseman, *Trade Secrets, Disclosure, and Dissent in a Fracturing Energy Revolution*, 111 COLUM. L. REV. SIDEBAR 1, 6-7 (2011), *available at* http://www.columbialawreview.org/wp-content/uploads/2011/01/1_Wiseman.pdf.
[91] DEP, *Geophysical Prospecting*, http://www.dep.state.fl.us/water/mines/oil_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf (last visited Jan. 26, 2016).

As defined, the term "high-pressure well stimulation" includes both hydraulic fracturing and acid fracturing and, consequently, a permit will be required before the performance of either technique. However, matrix acidizing, as it is performed at a pressure that does not exceed the fracture gradient, is outside the scope of the definition and would remain regulated as a workover.

Section 3 amends s. 377.22, F.S., to require the Department of Environmental Protection (DEP) to adopt rules for the regulation of high-pressure well stimulations, as well as rules relating to oil and gas well operations generally. The bill:

- Requires a bond or other form of security to be conditioned upon properly drilling, casing, producing, and operating each well and upon restoration of the area.
- Specifies that inspections are required during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations.
- Authorizes the DEP to evaluate the history of prior adjudicated, uncontested, or settled violations committed by the permit applicant or the applicant's affiliated entities of any substantive and material rule or law pertaining to the regulation of oil or gas.

Section 4 amends s. 377.24, F.S., to require a person who desires to perform a high-pressure well stimulation to provide notice to the DEP, pay a fee, and receive a permit before the performance of a high-pressure well stimulation. The bill provides that a permit may authorize a single activity or multiple activities. The bill provides that an application for permission to perform a high-pressure well stimulation may only be denied by the Division of Water Resource Management (Division) for just and lawful cause.

The bill removes the prohibition against the granting of permits for drilling a gas or oil well within the corporate limits of a municipality without the approval of the governing authority of the municipality by resolution. The bill prohibits a permit to drill a gas or oil well from being granted within the jurisdictional boundaries of any municipality or county, unless the applicant provides notice of the permit application by certified mail to the governing authority of the county or municipality. The applicant is required to include a copy of the notice with the permit application.

The bill prohibits the DEP from approving a permit authorizing high-pressure well stimulations until rules are adopted for high-pressure well stimulations which are based upon the findings of the study on high-pressure well stimulations and such rules take effect. The bill requires the rules for high-pressure well stimulation to be submitted to the President of the Senate and the Speaker of the House of Representatives and prohibits such rules from taking effect until they are ratified by the Legislature.

Section 5 amends s. 377.241, F.S., to add criteria the DEP must consider and be guided by relating to the issuance of permits for high-pressure well stimulations; specifically, whether the high-pressure well stimulation as proposed is designed to ensure that the groundwater near the well location or through which the well will be or has been drilled is not contaminated as a result of the high-pressure well stimulation and whether the performance of the high-pressure well

stimulation is consistent with the public policy of the state to safeguard the health, property, and public welfare of the citizens of the state.[92]

The bill specifies that a permit may be denied or specific conditions of a permit may be required, including increased bonding and monitoring, if the permit applicant or affiliated entity has a history of prior adjudicated, uncontested, or settled violations of any substantive and material rule or law pertaining to the regulation of oil and gas, including violations that occurred outside of Florida.

The bill adds matters raised in comments timely submitted by a municipality or county to the Division of Water Resource Management to the list of criteria that the Division must give consideration to and be guided by when issuing permits for oil and gas activities.

Section 6 amends s. 377.242, F.S., to specify that the DEP has the authority to issue permits for the performance of a high-pressure well stimulation. The bill clarifies that a permittee agrees to inspections during the installation and cementing of the casing, during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations.

Section 7 amends s. 377.2425, F.S., to require the permit applicant or operator to provide surety that the performance of a high-pressure well stimulation will be conducted in a safe and environmentally compatible manner.

Section 8 creates s. 377.2436, F.S., to require the DEP to conduct a study on high-pressure well stimulations. The study must include all of the following:

- An evaluation of the underlying geologic features in the counties where oil wells have been permitted and an analysis of the potential impact that high-pressure well stimulations and wellbore construction may have on the underlying geologic features;
- An evaluation of the potential hazards and risks that high-pressure well stimulations pose to surface water or groundwater resources;
- An assessment of the potential impact of high-pressure well stimulations on drinking water resources and an identification of the main factors affecting the severity and frequency of impacts;
- An analysis of the potential for the use or reuse of recycled water in well stimulation fluids, while meeting the appropriate water quality standards;
- A review and evaluation of the potential for groundwater contamination from conducting high-pressure well stimulations under or near wells that have been previously abandoned and plugged;
- An identification of a setback radius from plugged and abandoned wells that could be impacted by high-pressure well stimulations;
- A review and evaluation of the ultimate disposition of high-pressure well stimulation fluids after use in high-pressure well stimulation processes;
- A review and evaluation of the potential direct and indirect economic benefits resulting from the use of high-pressure well stimulations, including effects on state and local tax revenues, royalty payments, employment opportunities, and demand for goods and services;

[92] Section 377.06, F.S.

- A review and evaluation of the potential seismic activity associated with high-pressure well stimulation and the deep-well disposal of oil and gas production wastewater; and
- A review and evaluation of the feasibility and impact of waterless fracturing technologies to perform high-pressure well stimulation.

The bill specifies that the DEP must continue conventional oil and gas business operations during the performance of the study and that there is not a moratorium on the evaluation and issuance of permits for conventional drilling, explorations, conventional completions, or conventional workovers during the performance of the study.

The bill requires the study to be subject to an independent scientific peer review, and the findings of the study to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2017. It also requires the results of the study to be posted to the DEP's website.

The bill prohibits the DEP from adopting rules for high-pressure well stimulations until the findings of the study have been submitted to the Legislature. The bill requires the DEP to adopt rules by March 1, 2018, to implement the findings of the study if such rules are warranted to protect public health, safety, and the environment.

Section 9 amends s. 377.37, F.S., to increase the civil penalty from $10,000 per offense per day to $25,000 per offense per day.

Section 10 creates s. 377.45, F.S., to require the DEP to designate the national chemical registry FracFocus as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. In addition to providing the following information to the DEP as part of the permitting process, the bill requires a service provider, vendor, or owner or operator to report all of the following information, at a minimum, to the DEP for submission to FracFocus:

- The service provider, vendor, or owner or operator's name;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The American Petroleum Institute (API) well number;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation;
- Each chemical ingredient that is subject to the Occupational Safety and Health Administration (OSHA) regulations set forth in 29 C.F.R. s. 1910.1200(g)(2)[93] and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed; and
- The trade or common name and the Chemical Abstract Service (CAS) number for each chemical ingredient.

[93] 29 C.F.R. s. 1910.1200(g)(2) requires chemical manufacturers and importers to insure that the safety data sheets have the required information. See Appendix D to s. 1910.1200 - Safety Data Sheets, *available at* https://www.osha.gov/dsg/hazcom/hazcom-appendix-d.html.

The bill requires the DEP to report this information to FracFocus, excluding any information that is subject to the Uniform Trade Secrets Protection Act as set forth in chapter 688, F.S. If FracFocus cannot accept and make publicly available such information, the DEP is required to post the information, excluding trade secret information, on its website.

The service provider, vendor, owner or operator is required to report the chemical disclosure information within 60 days of the initiation of the high-pressure well stimulation. The service provider, vendor, well owner, or operator must also notify the DEP if any chemical ingredient not previously reported was intentionally included and used for the purpose of performing a high-pressure well stimulation.

The new section created by the bill (s. 377.45, F.S.) does not apply to ingredients that are unintentionally added to the high-pressure well stimulation, occur incidentally, or are otherwise unintentionally present in the high-pressure well stimulation.

The bill provides the DEP with rule authority to administer this section.

Section 11 amends s. 377.07, F.S., to rename the Division of Resource Management to the Division of Water Resource Management.

Section 12 amends s. 377.10, F.S., to make technical changes.

Section 13 amends s. 377.243, F.S., to make technical changes.

Section 14 amends s. 377.244, F.S., to make technical changes.

Section 15 provides an appropriation of $1,000,000 in nonrecurring funds from the General Revenue Fund for the 2016-2017 fiscal year to the DEP to conduct a study on high-pressure well stimulations.

Section 16 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. (18)(b) of the Florida Constitution may apply because the bill restricts the authority of counties and municipalities to establish programs that regulate any activity related to oil and gas exploration, production, processing, storage, and transportation. No county or municipality currently operates such permitting program.[94] Therefore, the mandates exception for insignificant fiscal impact may apply.

[94] Florida League of Cities, *Legislative Issue Briefs, Hydraulic Fracturing (Fracking)*, http://www.floridaleagueofcities.com/Assets/Files/Advocacy/2016_IB_Fracking.pdf (last visited Jan. 7, 2016).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

PCS/CS/SB 318 authorizes a new permit fee for high-pressure well stimulations and increases fines from $10,000 per offense per day to $25,000 per offense per day. The increased revenue associated with the new permit fee is indeterminate. Should violations occur, the increased revenue associated with the increased fine will have a positive indeterminate fiscal impact to the Minerals Trust Fund within the DEP.

B. Private Sector Impact:

The bill increases penalties from $10,000 to $25,000 per offense, which will have a negative fiscal impact on private companies that are found in violation of the law.

C. Government Sector Impact:

The Department of Environmental Protection (DEP) will incur additional costs associated with permitting high-pressure well stimulation techniques. The regulatory costs and permit fee(s) will be based on the permitting requirements to be established through the rulemaking process. According to the DEP, existing staff is sufficient to handle the anticipated workload increases.[95] The increased revenues associated with permit fees is indeterminate.

The bill increases the penalty for violations from $10,000 per offense to $25,000 per offense. Should violations occur, the increased revenue will have a positive fiscal impact to the Minerals Trust Fund within the DEP.

According to the DEP, the costs associated to amend Rules 62C-25 through 30, of the Florida Administrative Code, can be absorbed within the DEP's existing budget.

The estimated cost for the study on high pressure well stimulations is $1 million.[96] The bill provides an appropriation of $1 million from nonrecurring general revenue for the study.

[95] DEP, *Senate Bill 318 Agency Legislative Bill Analysis*, pg. 4 (Nov. 6, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[96] *Id*.

VI. Technical Deficiencies:

The bill requires the Division of Water Resource Management (Division) to consider and be guided by matters raised in comments timely submitted by a municipality or county, related to the issuance of permits to drill a gas or oil well, which are submitted to the Division pursuant to s. 377.24(5), F.S, when reviewing a permit application. The cross-referenced subsection requires a permit applicant to provide notice to the county or municipality of the permit application, it does not provide a process for counties or municipalities to submit comments on the permit application to the Division.

VII. Related Issues:

The bill requires the DEP to conduct a study evaluating underlying geologic features. The language refers only to counties in which oil wells have been permitted and, therefore, may not include counties that have only permitted gas wells or counties where applications have been submitted for exploratory permits. The DEP has represented that any variation in the underlying geologic features between the counties where oil wells have been permitted and counties where gas wells or exploratory permits have been applied for are negligible for the purposes of the study.[97]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 377.06, 377.19, 377.22, 377.24, 377.241, 377.242, 377.2425, 377.37, 377.07, 377.10, 377.243, and 377.244.

This bill creates the following sections of the Florida Statutes: 377.2436 and 377.45.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on January 25, 2016:
The committee substitute:

- Authorizes a county or municipality to adopt and enforce zoning or land use requirements which affect the use of property for the exploration, development, production, processing, storage or transportation of oil and gas, with the exception of geophysical operations, so long as such zoning or land use requirements do not impose a moratorium on, effectively prohibit, or inordinately burden one or more of these activities on a subject property.
- Removes the ability for counties or municipalities to enforce existing zone ordinances passed before January 1, 2015, related to oil and gas exploration, development, production, processing, storage, and transportation if the ordinance is otherwise valid.

[97] Email from Andrew Ketchel, Director, Office of Legislative Affairs, DEP (Jan. 7, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

- Requires applicants for permits to drill a gas or oil well to provide notice of the permit application to any municipality or county within which the permit would authorize drilling a gas or oil well and requires matters raised by a municipality or county in response to such permit which are timely submitted to the Division of Water Resource Management to be considered as criteria for the issuance of the permit.
- Expands the scope of the study to include the economic benefits resulting from the use of high-pressure well stimulations, potential seismic activity associated with high-pressure well stimulation and the deep-well disposal of oil and gas production wastewater, and the impact of waterless fracking technologies.

CS by Environmental Preservation and Conservation on January 13, 2016:

- The CS authorizes the DEP to evaluate the prior adjudicated, uncontested, or settled violations committed by permit applicants as a basis for permit denial or imposition of specific permit conditions.
- The CS authorizes the DEP to consider as a criterion for issuing a permit for a high-pressure well stimulation, whether the high-pressure well stimulation as proposed is designed to ensure that the groundwater near the well location is not contaminated as a result of the high-pressure well stimulation. Additionally, the CS clarifies that the study provide a review and evaluation of the potential for groundwater contamination from conducting high-pressure well stimulations near well that have been previously abandoned and plugged.
- The CS prohibits the DEP from adopting rules for high-pressure well stimulations until the findings of the study have been submitted to the Legislature and the CS clarifies that the rules are to be based upon the findings of the study. Additionally, the CS requires legislative ratification of the rules prior to such rules taking effect and prohibits the DEP from issuing permits for high-pressure well stimulations until such rules take effect.

B. Amendments:

None.


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

A bill to be entitled

An act relating to the regulation of oil and gas resources; amending s. 377.06, F.S.; preempting the regulation of all matters relating to the exploration, development, production, processing, storage, and transportation of oil and gas; declaring ordinances and regulations relating thereto void; providing an exception for certain zoning or land use requirements; ordinances and regulations relating thereto void; providing an exception for certain zoning ordinances; amending s. 377.19, F.S.; applying the definitions of certain terms to additional sections of ch. 377, F.S.; revising the definition of the term "division"; conforming a cross-reference; defining the term "high-pressure well stimulation"; amending s. 377.22, F.S.; revising the rulemaking authority of the Department of Environmental Protection; amending s. 377.24, F.S.; requiring that a permit be obtained before the performance of a high-pressure well stimulation; specifying that a permit may authorize single or multiple activities; revising provisions that prohibit the Division of Water Resource Management from granting permits to drill gas or oil wells; providing notice requirements for an application of such permit; prohibiting the department from approving permits for high-pressure well stimulation until certain rules are adopted and take effect; requiring legislative


508372

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ratification of such rules; amending s. 377.241, F.S.; requiring the Division of Water Resource Management to give consideration to and be guided by certain additional criteria when issuing permits; amending s. 377.242, F.S.; authorizing the department to issue permits for the performance of a high-pressure well stimulation; revising permit requirements that permitholders agree not to prevent division inspections; amending s. 377.2425, F.S.; requiring an applicant or operator to provide surety that performance of a high-pressure well stimulation will be conducted in a safe and environmentally compatible manner; creating s. 377.2436, F.S.; requiring the department to conduct a study on high-pressure well stimulation; providing study criteria; requiring the study to be submitted to the Governor and Legislature and posted on the department website; prohibiting the department from adopting rules until the study has been submitted to the Legislature; requiring the department to adopt rules under certain conditions by a specified date; amending s. 377.37, F.S.; increasing the maximum amount of a civil penalty; creating s. 377.45, F.S.; requiring the department to designate the national chemical disclosure registry as the state's registry; requiring service providers, vendors, and well owners or operators to report certain information to the department; requiring the department to report certain information to the national chemical registry; providing applicability;

requiring the department to adopt rules; amending ss. 377.07, 377.10, 377.243, and 377.244, F.S.; making technical changes; conforming provisions to changes made by the act; providing an appropriation; providing an effective date.

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

Section 1. Section 377.06, Florida Statutes, is amended to read:

377.06 Public policy of state concerning natural resources of oil and gas; preemption.—

(1) It is ~~hereby declared~~ the public policy of this state to conserve and control the natural resources of oil and gas in this state, and the products made from oil and gas in this state; to prevent waste of natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land in which the natural resources lie, of the owners and producers of oil and gas resources and the products made from oil and gas, and of others interested in these resources and products; and to safeguard the health, property, and public welfare of the residents of this state and other interested persons ~~and for all purposes indicated by the provisions in this section~~.

(2) ~~Further,~~ It is the public policy of this state ~~declared~~ that underground storage of natural gas is in the public interest because underground storage promotes conservation of natural gas~~,~~ makes gas more readily available to the domestic, commercial, and industrial consumers of this state~~,~~ and allows

the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods of peak demand. It is not the intention of this section to limit, restrict, or modify in any way the provisions of this law.

(3) The Legislature declares that all matters relating to the regulation of the exploration, development, production, processing, storage, and transportation of oil and gas are preempted to the state, to the exclusion of all existing and future ordinances or regulations relating thereto adopted by any county, municipality, or other political subdivision of the state. All such ordinances or regulations are hereby declared void as a matter of law, including those that impose a moratorium or effect a ban on one or more of these activities. A county or municipality may, however, adopt and enforce zoning or land use requirements which affect the use of property for the exploration, development, production, processing, storage or transportation of oil and gas, with the exception of geophysical operations pursuant to s. 377.2424(3), so long as such zoning or land use requirements would not impose a moratorium on, effectively prohibit, or inordinately burden one or more of these activities on a subject property.

Section 2. Section 377.19, Florida Statutes, is amended to read:

377.19 Definitions.—As used in ss. 377.06, 377.07, and 377.10-377.45 ~~377.10-377.40~~, the term:

(1) "Completion date" means the day, month, and year that a new productive well, a previously shut-in well, or a temporarily abandoned well is completed, repaired, or recompleted and the operator begins producing oil or gas in commercial quantities.

(2) "Department" means the Department of Environmental Protection.

(3) "Division" means the Division of Water Resource Management of the Department of Environmental Protection.

(4) "Field" means the general area that is underlaid, or appears to be underlaid, by at least one pool. The term includes the underground reservoir, or reservoirs, containing oil or gas, or both. The terms "field" and "pool" mean the same thing if only one underground reservoir is involved; however, the term "field," unlike the term "pool," may relate to two or more pools.

(5) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (16) ~~(15)~~.

(6) "High-pressure well stimulation" means all stages of a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. The term does not include well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore.

(7) ~~(6)~~ "Horizontal well" means a well completed with the wellbore in a horizontal or nearly horizontal orientation within 10 degrees of horizontal within the producing formation.

(8) ~~(7)~~ "Illegal gas" means gas that has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the division, as

distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(9) ~~(8)~~ "Illegal oil" means oil that has been produced within the state from any well or wells in excess of the amount allowed by rule, regulation, or order of the division, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed, which is "legal oil."

(10) ~~(9)~~ "Illegal product" means a product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(11) ~~(10)~~ "Lateral storage reservoir boundary" means the projection up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.

(12) ~~(11)~~ "Native gas" means gas that occurs naturally within this state and does not include gas produced outside the state, transported to this state, and injected into a permitted natural gas storage facility.

(13) ~~(12)~~ "Natural gas storage facility" means an underground reservoir from which oil or gas has previously been produced and which is used or to be used for the underground storage of natural gas, and any surface or subsurface structure, or infrastructure, except wells. The term also includes a right or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including

any necessary or reasonable reservoir protective area as designated for the purpose of ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof. The term does not mean a transmission, distribution, or gathering pipeline or system that is not used primarily as integral piping for a natural gas storage facility.

(14) ~~(13)~~ "Natural gas storage reservoir" means a pool or field from which gas or oil has previously been produced and which is suitable for or capable of being made suitable for the injection, storage, and recovery of gas, as identified in a permit application submitted to the department under s. 377.2407.

(15) ~~(14)~~ "New field well" means an oil or gas well completed after July 1, 1997, in a new field as designated by the Department of Environmental Protection.

(16) ~~(15)~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(17) ~~(16)~~ "Oil and gas" has the same meaning as the term "oil or gas."

(18) ~~(17)~~ "Oil and gas administrator" means the State Geologist.

(19) ~~(18)~~ "Operator" means the entity who:

(a) Has the right to drill and to produce a well; or

(b) As part of a natural gas storage facility, injects, or

is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or stores gas in, or removes gas from, a natural gas storage reservoir.

(20) ~~(19)~~ "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production for the person or for the person and another, or others.

(21) ~~(20)~~ "Person" means a natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(22) ~~(21)~~ "Pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate pool as used herein.

(23) ~~(22)~~ "Producer" means the owner or operator of a well or wells capable of producing oil or gas, or both.

(24) ~~(23)~~ "Product" means a commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(25) ~~(24)~~ "Reasonable market demand" means the amount of oil

reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(26) ~~(25)~~ "Reservoir protective area" means the area extending up to and including 2,000 feet surrounding a natural gas storage reservoir.

(27) ~~(26)~~ "Shut-in bottom hole pressure" means the pressure at the bottom of a well when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.

(28) ~~(27)~~ "Shut-in well" means an oil or gas well that has been taken out of service for economic reasons or mechanical repairs.

(29) ~~(28)~~ "State" means the State of Florida.

(30) ~~(29)~~ "Temporarily abandoned well" means a permitted well or wellbore that has been abandoned by plugging in a manner that allows reentry and redevelopment in accordance with oil or gas rules of the Department of Environmental Protection.

(31) ~~(30)~~ "Tender" means a permit or certificate of clearance for the transportation or the delivery of oil, gas, or products, approved and issued or registered under the authority of the division.

(32) ~~(31)~~ "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. The term "waste" includes:

(a) The inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that results, or tends to result, in reducing the quantity of oil or gas ultimately to be stored or recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes, or tends to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) The producing of oil or gas in a manner that causes unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(f) The underground waste, however caused and whether or not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount that is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) The abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals, causing undue drainage between tracts of land.

(33) ~~(32)~~ "Well site" means the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas, or to inject gas into and

recover gas from a natural gas storage facility.

Section 3. Subsection (2) of section 377.22, Florida Statutes, is amended to read:

377.22 Rules and orders.—

(2) The department shall issue orders and adopt rules pursuant to ss. 120.536 and 120.54 to implement and enforce ~~the provisions of~~ this chapter. Such rules and orders shall ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, including high-pressure well stimulations, or during the injection of gas into and recovery of gas from a natural gas storage reservoir. The department shall revise such rules from time to time as necessary for the proper administration and enforcement of this chapter. Rules adopted and orders issued in accordance with this section are for, but not limited to, the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs.

(b) To prevent the alteration of the sheet flow of water in any area.

(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.

(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or

other petroleum products from one stratum to another.

(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum, except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.

(f) To require a reasonable bond, or other form of security acceptable to the department, conditioned upon properly drilling, casing, producing, and operating each well and properly plugging ~~the performance of the duty to plug properly~~ each dry and abandoned well and upon the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence before ~~prior to~~ such operation.

(g) To require and carry out a reasonable program of monitoring and inspecting ~~or inspection of~~ all drilling operations, high-pressure well stimulations, producing wells, ~~or~~ injecting wells, and well sites, including regular inspections by division personnel. Inspections are required during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations.

(h) To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records.

However, such information, or any part thereof, at the request of the operator, shall be exempt from ~~the provisions of~~ s. 119.07(1) and held confidential by the division for ~~a period of~~ 1 year after the completion of a well.

(i) To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs.

(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(l) To prevent "blowouts," "caving," and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(m) To prevent fires.

(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities.

(o) To regulate the "shooting," perforating, ~~and~~ chemical treatment, and high-pressure stimulations of wells.

(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(q) To regulate gas cycling operations.

(r) To regulate the storage and recovery of gas injected into natural gas storage facilities.

(s) If necessary for the prevention of waste, as herein defined, to determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state.

(t) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.

(u) To regulate the spacing of wells and to establish drilling units.

(v) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

(w) To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas.

(x) To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state.

(y) To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.

(z) To evaluate the history of prior adjudicated, uncontested, or settled violations committed by permit applicants or the applicants' affiliated entities of any substantive and material rule or law pertaining to the regulation of oil or gas.

Section 4. Subsections (1), (2), (4), and (5) of section 377.24, Florida Statutes, are amended, and subsections (10) and (11) are added to that section, to read:

377.24 Notice of intention to drill well; permits;

abandoned wells and dry holes.—

(1) Before drilling a well in search of oil or gas, before performing a high-pressure well stimulation, or before storing gas in or recovering gas from a natural gas storage reservoir, the person who desires to drill for, store, or recover gas, ~~or~~ drill for oil or gas, or perform a high-pressure well stimulation shall notify the division upon such form as it may prescribe and shall pay a reasonable fee set by rule of the department not to exceed the actual cost of processing and inspecting for each well or reservoir. The drilling of any well, the performance of any high-pressure well stimulation, and the storing and recovering of gas are prohibited until such notice is given, the fee is paid, and a ~~the~~ permit is granted. A permit may authorize a single activity or multiple activities.

(2) An application for the drilling of a well in search of oil or gas, for the performance of a high-pressure well stimulation, or for the storing of gas in and recovering of gas from a natural gas storage reservoir~~,~~ in this state must include the address of the residence of the applicant~~,~~ or applicants, which must be the address of each person involved in accordance with the records of the Division of Water Resource Management until such address is changed on the records of the division after written request.

(4) Application for permission to drill or abandon any well or perform a high-pressure well stimulation may be denied by the division for only just and lawful cause.

(5) No permit to drill a gas or oil well shall be granted within the jurisdictional boundaries of any municipality or county, unless the applicant provides notice of the permit

application, by certified mail, to ~~the corporate limits of any municipality, unless~~ the governing authority of the county or municipality. The applicant shall include a copy of the notice with the permit application ~~shall have first duly approved the application for such permit by resolution~~.

(10) The department may not approve a permit to authorize a high-pressure well stimulation until the department adopts rules for high-pressure well stimulations which are based upon the findings of the study required pursuant to s. 377.2436 and such rules take effect.

(11) The rules for high-pressure well stimulation shall be submitted to the President of the Senate and Speaker of the House of Representatives and such rules may not take effect until they are ratified by the Legislature.

Section 5. Subsections (5), (6), and 7 are added to section 377.241, Florida Statutes, to read:

377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(5) For high-pressure well stimulations, whether the high-pressure well stimulation as proposed is designed to ensure that:

(a) The groundwater near the well location, including groundwater through which the well will be or has been drilled, is not contaminated as a result of the high-pressure well stimulation; and

(b) The high-pressure well stimulation is consistent with the public policy of this state as specified in s. 377.06.

(6) As a basis for permit denial or imposition of specific permit conditions, including increased bonding up to five times the applicable limits and increased monitoring, the history of prior adjudicated, uncontested, or settled violations committed by the applicant or an affiliated entity of the applicant of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state.

(7) Matters raised in comments timely submitted by a municipality or county to the division pursuant to s. 377.24(5).

Section 6. Section 377.242, Florida Statutes, is amended to read:

377.242 Permits for drilling or exploring and extracting through well holes or by other means.—The department is vested with the power and authority:

(1)(a) To issue permits for the performance of a high-pressure well stimulation or the drilling for, exploring for, or production of oil, gas, or other petroleum products that ~~which~~ are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.

1. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed on any submerged land within any bay or estuary.

2. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed within 1 mile seaward of the coastline of the state.

3. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream.

4. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless the department is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.

5. Without exception, after July 1, 1989, a ~~no~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed south of 26°00′00″ north latitude off Florida's west coast and south of 27°00′00″ north latitude off Florida's east coast, within the boundaries of Florida's territorial seas as defined in 43 U.S.C. s. 1301. After July 31, 1990, a ~~no~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed north of 26°00′00″ north latitude off Florida's west coast to the western boundary of the state bordering Alabama as set forth in s. 1, Art. II of the State Constitution, or located north of 27°00′00″ north latitude off Florida's east coast to the northern boundary of the state bordering Georgia as set forth in s. 1, Art. II of the State Constitution, within the boundaries

of Florida's territorial seas as defined in 43 U.S.C. s. 1301.

(b) Subparagraphs (a)1. and 4. do not apply to permitting or construction of structures intended for the drilling for, or production of, oil, gas, or other petroleum products pursuant to an oil, gas, or mineral lease of such lands by the state under which lease any valid drilling permits are in effect on the effective date of this act. In the event that such permits contain conditions or stipulations, such conditions and stipulations shall govern and supersede subparagraphs (a)1. and 4.

(c) The prohibitions of subparagraphs (a)1.-4. ~~in this subsection~~ do not include "infield gathering lines," provided no other placement is reasonably available and all other required permits have been obtained.

(2) To issue permits to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole.

(3) To issue permits to establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.

Each permit shall contain an agreement by the permitholder that the permitholder will not prevent inspection by division personnel at any time, including during installation and cementing of casing, during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations. The provisions of this section prohibiting permits for drilling or exploring for oil in coastal

waters do not apply to any leases entered into before June 7, 1991.

Section 7. Subsection (1) of section 377.2425, Florida Statutes, is amended to read:

377.2425 Manner of providing security for geophysical exploration, drilling, and production.—

(1) Before ~~Prior to~~ granting a permit for conducting ~~to conduct~~ geophysical operations; drilling of exploratory, injection, or production wells; producing oil and gas from a wellhead; performing a high-pressure well stimulation; or transporting oil and gas through a field-gathering system, the department shall require the applicant or operator to provide surety that these operations will be conducted in a safe and environmentally compatible manner.

(a) The applicant for a drilling, production, high-pressure well stimulation, or injection well permit or a geophysical permit may provide the following types of surety to the department for this purpose:

1. A deposit of cash or other securities made payable to the Minerals Trust Fund. Such cash or securities so deposited shall be held at interest by the Chief Financial Officer to satisfy safety and environmental performance provisions of this chapter. The interest shall be credited to the Minerals Trust Fund. Such cash or other securities shall be released by the Chief Financial Officer upon request of the applicant and certification by the department that all safety and environmental performance provisions established by the department for permitted activities have been fulfilled.

2. A bond of a surety company authorized to do business in

the state in an amount as provided by rule.

3. A surety in the form of an irrevocable letter of credit in an amount as provided by rule guaranteed by an acceptable financial institution.

(b) An applicant for a drilling, production, high-pressure well stimulation, or injection well permit, or a permittee who intends to continue participating in long-term production activities of such wells, has the option to provide surety to the department by paying an annual fee to the Minerals Trust Fund. For an applicant or permittee choosing this option the following shall apply:

1. For the first year, or part of a year, of a drilling, production, or injection well permit, or change of operator, the fee is $4,000 per permitted well.

2. For each subsequent year, or part of a year, the fee is $1,500 per permitted well.

3. The maximum fee that an applicant or permittee may be required to pay into the trust fund is $30,000 per calendar year, regardless of the number of permits applied for or in effect.

4. The fees set forth in subparagraphs 1., 2., and 3. shall be reviewed by the department on a biennial basis and adjusted for the cost of inflation. The department shall establish by rule a suitable index for implementing such fee revisions.

(c) An applicant for a drilling or operating permit for operations planned in coastal waters that by their nature warrant greater surety shall provide surety only in accordance with paragraph (a), or similar proof of financial responsibility other than as provided in paragraph (b). For all such

applications, including applications pending at the effective date of this act and notwithstanding ~~the provisions of~~ paragraph (b), the Governor and Cabinet in their capacity as the Administration Commission, at the recommendation of the department ~~of Environmental Protection~~, shall set a reasonable amount of surety required under this subsection. The surety amount shall be based on the projected cleanup costs and natural resources damages resulting from a maximum oil spill and adverse hydrographic and atmospheric conditions that would tend to transport the oil into environmentally sensitive areas, as determined by the department ~~of Environmental Protection~~.

Section 8. Section 377.2436, Florida Statutes, is created to read:

377.2436 Study on high-pressure well stimulations.—

(1) The department shall conduct a study on high-pressure well stimulations. The study must:

(a) Evaluate the underlying geologic features present in the counties where oil wells have been permitted and analyze the potential impact that high-pressure well stimulation and wellbore construction may have on the underlying geologic features.

(b) Evaluate the potential hazards and risks that high-pressure well stimulation poses to surface water or groundwater resources. The study must assess the potential impacts of high-pressure well stimulation on drinking water resources and identify the main factors affecting the severity and frequency of impacts and must analyze the potential for the use or reuse of recycled water in well stimulation fluids while meeting appropriate water quality standards.

(c) Review and evaluate the potential for groundwater contamination from conducting high-pressure well stimulation under or near wells that have been previously plugged and abandoned and identify a setback radius from previously plugged and abandoned wells that could be impacted by high-pressure well stimulation.

(d) Review and evaluate the ultimate disposition of high-pressure well stimulation fluids after use in high-pressure well stimulation processes.

(e) Review and evaluate the potential direct and indirect economic benefits resulting from the use of high-pressure well stimulation, including effects on state and local tax revenues, royalty payments, employment opportunities, and demand for goods and services.

(f) Review and evaluate potential seismic activity associated with high-pressure well stimulation and the deep-well disposal of oil and gas production wastewater.

(g) Review and evaluate the feasibility and impact of waterless fracturing technologies to perform high-pressure well stimulation.

(2) The department shall continue conventional oil and gas business operations during the performance of the study. There may not be a moratorium on the evaluation and issuance of permits for conventional drilling, exploration, conventional completions, or conventional workovers during the performance of the study.

(3) The study is subject to independent scientific peer review.

(4) The department shall submit the findings of the study

to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2017, and shall prominently post the findings on its website.

(5) The department may not adopt rules for high-pressure well stimulation until the findings of the study have been submitted to the Legislature. However, by March 1, 2018, the department must adopt rules to implement the findings of the study, if such rules are warranted to protect public health, safety, and the environment.

Section 9. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) A ~~Any~~ person who violates any provision of this chapter ~~law~~ or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or

operator is subject to the judicial imposition of a civil penalty ~~in an amount~~ of not more than $25,000 ~~$10,000~~ for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. This paragraph does not ~~Nothing herein shall~~ give the department the right to bring an action on behalf of a ~~any~~ private person.

Section 10. Section 377.45, Florida Statutes, is created to read:

377.45 High-pressure well stimulation chemical disclosure registry.—

(1)(a) The department shall designate the national chemical disclosure registry, known as FracFocus, developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. The department shall provide a link to FracFocus through its website.

(b) In addition to providing the following information to the department as part of the permitting process, a service provider, vendor, or well owner or operator shall report, as established by department rule, to the department, at a minimum, the following information:

1. The name of the service provider, vendor, or owner or operator.

2. The date of completion of the high-pressure well stimulation.

3. The county in which the well is located.

4. The API Well Number.

5. The well name and number.

6. The longitude and latitude of the wellhead.

7. The total vertical depth of the well.

8. The total volume of water used in the high-pressure well stimulation.

9. Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2) and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed.

10. The trade or common name and the CAS Registry Number for each chemical ingredient.

(c) The department shall report to FracFocus all information received under paragraph (b), excluding any information subject to chapter 688.

(d) If FracFocus cannot accept and make publicly available any information specified in this section, the department shall post the information on its website, excluding any information subject to chapter 688.

(2) A service provider, vendor, or well owner or operator shall:

(a) Report the information required under subsection (1) to the department within 60 days after the initiation of the high-pressure well stimulation for each well on which such high-pressure well stimulation is performed.

(b) Notify the department if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

(3) This section does not apply to an ingredient that:

(a) Is not intentionally added to the high-pressure well

stimulation; or

(b) Occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

(4) The department shall adopt rules to administer this section.

Section 11. Section 377.07, Florida Statutes, is amended to read:

377.07 Division of Water Resource Management; powers, duties, and authority.—The Division of Water Resource Management of the Department of Environmental Protection is ~~hereby~~ vested with power, authority, and duty to administer, carry out, and enforce ~~the provisions of~~ this part ~~law as directed in s. 370.02(3)~~.

Section 12. Section 377.10, Florida Statutes, is amended to read:

377.10 Certain persons not to be employed by division.—A ~~No~~ person in the employ of, or holding any official connection or position with any person, firm, partnership, corporation, or association of any kind, engaged in the business of buying or selling mineral leases, drilling wells in the search of oil or gas, producing, transporting, refining, or distributing oil or gas may not ~~shall~~ hold any position under, or be employed by, the Division of Water Resource Management in the prosecution of its duties under this part ~~law~~.

Section 13. Subsection (1) of section 377.243, Florida Statutes, is amended to read:

377.243 Conditions for granting permits for extraction through well holes.—

(1) Before applying ~~Prior to the application~~ to the

Division of Water Resource Management for the permit to drill for oil, gas, and related products referred to in s. 377.242(1), the applicant must own a valid deed, or other muniment of title, or lease granting the ~~said~~ applicant the privilege to explore for oil, gas, or related mineral products to be extracted only through the well hole on the land or lands included in the application. However, unallocated interests may be unitized according to s. 377.27.

Section 14. Subsection (1) of section 377.244, Florida Statutes, is amended to read:

377.244 Conditions for granting permits for surface exploratory and extraction operations.—

(1) Exploration for and extraction of minerals under ~~and by virtue of~~ the authority of a grant of oil, gas, or mineral rights, or which, subsequent to such grant, may ~~be interpreted to~~ include the right to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole, that is by means of surface exploratory and extraction operations such as sifting of the sands, dragline, open pit mining, or other type of surface operation, which would include movement of sands, dirt, rock, or minerals, shall be exercised only pursuant to a permit issued by the Division of Water Resource Management upon the applicant's compliance ~~applicant complying~~ with the following conditions:

(a) The applicant must own a valid deed, or other muniment of title, or lease granting the applicant the right to explore for and extract oil, gas, and other minerals from the ~~said~~ lands.

(b) The applicant shall post a good and sufficient surety

bond with the division in such amount as the division determines ~~may determine~~ is adequate to afford full and complete protection for the owner of the surface rights of the lands described in the application, conditioned upon the full and complete restoration, by the applicant, of the area over which the exploratory and extraction operations are conducted to the same condition and contour in existence before ~~prior to~~ such operations.

Section 15. For the 2016-2017 fiscal year, the sum of $1 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection to conduct a high-pressure well stimulation study pursuant to s. 377.2436, Florida Statutes.

Section 16. This act shall take effect July 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 Appropriations

BILL:	CS/SB 318
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Richter
SUBJECT:	Regulation of Oil and Gas Resources
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Howard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 318 revises Florida's oil and gas regulations to define the term "high-pressure well stimulation" and requires a separate permit for the performance of high-pressure well stimulations. The bill directs the Department of Environmental Protection (DEP) to conduct a study analyzing the potential impacts that high-pressure well stimulations may have on Florida's underlying geologic features. The bill prohibits permits for high-pressure well stimulations from being issued until the DEP adopts rules regulating high-pressure well stimulations and such rules take effect.

Additionally, the bill:

- Preempts to the state all matters relating to the regulation of the exploration, development, production, processing, storage, and transportation of oil and gas;
- Requires inspections during the testing of blowout preventers, the pressure testing of the casing and casing shoe, and the integrity testing of cement plugs in plugging and abandonment operations;
- Requires notice to be given, a fee to be paid, and a permit to be granted before performing a high-pressure well stimulation;
- Requires the DEP to consider groundwater contamination as a result of high-pressure well stimulations and public policy when reviewing a permit application for high-pressure well stimulations;
- Specifies that a permit may be denied or specific permitting conditions may be applied based on the past history of prior adjudicated, uncontested, or settled violations committed by the

permit applicant or an affiliated entity of the applicant of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state;
- Clarifies the inspection authority of the DEP;
- Requires the permit applicant to provide surety to the DEP that the high-pressure well stimulation will be conducted in a safe and environmentally compatible manner;
- Increases the civil penalty from $10,000 per day to $25,000 per day for violations; and
- Designates FracFocus as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed.

The bill provides a $1 million nonrecurring appropriation from the General Revenue Fund to the DEP to conduct a study on high-pressure well stimulations. According to the DEP, the increased workload related to the regulatory and rulemaking process can be handled within existing resources. The remaining fiscal impact of the bill is indeterminate.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Production of conventional versus unconventional oil and gas resources: the use of well stimulation techniques

Conventional oil and gas resources are found in permeable sandstone and carbonate reservoirs.[1] To extract conventional resources, wells have historically been drilled vertically, straight down into a rock formation. Whereas conventional resources are found in concentrated underground locations, unconventional resources are highly dispersed through impermeable or "tight" rock formations such as shales and tight sands. To extract unconventional resources, drilling has shifted from vertical to horizontal or directional away from the reservoir to the source rock, and well stimulation techniques have been developed to increase the production at such oil or gas wells. The profitable extraction of unconventional resources is relatively new.[2]

Well stimulation techniques are used in the production of both conventional and unconventional resources. The techniques can be focused solely on the wellbore for maintenance and remedial purposes or can be used to increase production from the reservoir.[3] The three most commonly used well stimulation techniques include matrix acidizing, acid fracturing, and hydraulic fracturing. Dating back to 1895, matrix acidizing is the oldest well stimulation technique. It involves pumping acid into the well at a pressure that does not exceed the fracture gradient to dissolve some of the rock to bypass wellbore damage or to stimulate carbonate formations.[4] Acid fracturing is a well stimulation technique that involves pumping acidic fluids into a well at a pressure that fractures the rock. The acid etches the walls of the fracture so the fractures remain

[1] Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, pg. 2 (Apr. 22, 2015), *available at* https://www.fas.org/sgp/crs/misc/R43148.pdf.
[2] *Id*. at 3.
[3] California Council on Science and Technology Lawrence Berkeley National Laboratory, *An Independent Assessment of Well Stimulation in California* (CA Study), Vol. 1, Well stimulation technologies and their past, present, and potential future use in California, January 2015, pg. 14, *available at* http://ccst.us/publications/2015/2015SB4-v1.php.
[4] *Id*. at 69.

open after the pressure is released. These types of acid stimulations are preferred in carbonate reservoirs.[5]

Hydraulic fracturing was developed in the 1940s to increase production of conventional resources. While the technique is not new, the composition of the fracturing fluids has evolved over time. Initially the technique used very little water and relied on a mixture of petroleum compounds, such as napalm and diesel fuels.[6] Modern hydraulic fracturing involves a fracturing fluid that is composed of a base fluid, in most cases water; additives, each designed to serve a particular function; and a proppant, such as sand, to hold the fractures open. The composition of the fracturing fluid varies depending on the property of the reservoir rock, specifically the rock's permeability and brittleness.[7] A hydraulic fracturing operation at a horizontal well involves four stages. The first is the "stage" during which a portion of the well is isolated to focus the fracture fluid pressure. The second is the "pad" in which fracture fluid is injected without proppant to initiate and propagate the fracture. The proppant is then added to keep the fractures open. The third stage is the "flush" during which fluid is injected without proppant to push any remaining proppant into the fractures. The fourth is the "flowback" during which the hydraulic fracturing fluids are removed and the fluid pressure dissipates.[8]

The Environmental Protection Agency (EPA) estimates that between 25,000-30,000 new wells were drilled and hydraulically fractured annually in the United States between 2011 and 2014.[9] Horizontal or directional drilling techniques in conjunction with hydraulic fracturing has led to a surge in domestic production of oil and gas resources in the recent decade and, in 2014, the United States was the world's top producer of petroleum and natural gas hydrocarbons.[10]

Production of oil and gas resources in Florida

Northwest and South Florida are the major oil and gas producing areas in the state. The first producing oil well was discovered in 1943 at a wellsite located in Big Cypress Preserve.[11] It was not until 1970 that oil and gas resources were first discovered in Northwest Florida. There are seven active fields in South Florida, specifically in Lee, Hendry, Collier, and Dade Counties, and

[5] *Id*. at 56.
[6] Gallegos, T.J., and Varela, B.A., *Trends in hydraulic fracturing distributions and treatment fluids, additives, proppants, and water volumes applied to wells drilled in the United States from 1947 through 2010—Data analysis and comparison to the literature: U.S. Geological Survey Scientific Investigations Report 2014–5131*, pg. 7 (2015), *available at* http://pubs.usgs.gov/sir/2014/5131/pdf/sir2014-5131.pdf.
[7] CA Study at 48.
[8] *Id*. at 42.
[9] U.S. Environmental Protection Agency (EPA), *DRAFT An Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, Executive Summary*, ES-5 (2015), *available at* http://www2.epa.gov/sites/production/files/2015-07/documents/hf_es_erd_jun2015.pdf. This draft document is undergoing peer review by the Scientific Advisory Board (SAB) Hydraulic Fracturing Research Advisory Panel. A SAB Draft Report is available at http://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentBOARD/f7a9db9abbac015785257e540052dd54!OpenDocument&TableRow=2.2#2.
[10] U.S. Energy Information Administration (EIA), *Today in Energy*, http://www.eia.gov/todayinenergy/detail.cfm?id=20692 (last visited Jan. 11, 2016).
[11] American Oil & Gas Historical Society, *First Florida Oil Well*, http://aoghs.org/states/first-florida-oil-well/ (last visited Jan. 11, 2016).

three active fields in Northwest Florida, specifically in Escambia and Santa Rosa Counties.[12] While geologists believe that there may be large oil and natural gas deposits off Florida's western coast, the state enacted a drilling ban for state waters in 1990 and, in 2006, Congress banned the leasing of federal offshore blocks within 125 miles of Florida's western coast until at least 2022.[13]

There are approximately 163 active wells in Florida.[14] The Department of Environmental Protection's (DEP) 2014 Annual Production Report totaled natural gas production at 728,884 million cubic feet (MMcf) and oil production totals at 614,668 thousand barrels (MBbls).[15]

Proven oil and gas reserves both in Northwest and South Florida are composed of carbonate formations and reservoirs that have relatively high permeability.[16] Because acid easily dissolves carbonate materials, techniques such as matrix acidizing and acid fracturing are preferred in carbonate reservoirs.[17] In December 2013, the DEP received a workover notice proposing use of an enhanced extraction procedure and requested that the company not complete until additional review could be performed.[18] The company commenced with the workover procedure, and the DEP issued a cease and desist order. After failing to comply with the order, the company withdrew its permit application.[19] The DEP reported that the last use of hydraulic fracturing on record was in the Jay oilfield in 2003.[20]

Regulation of well stimulation techniques

Federal

There is limited direct federal regulation over the use of well stimulation techniques. In 2005, Congress passed the Energy Policy Act amending the Safe Water Drinking Act (SWDA) and the Clean Water Act (CWA).[21] The SWDA was amended to revise the definition of the term "underground injection" to specifically exclude the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations. The CWA was amended to characterize oil and gas exploration and production as "construction activities,"

[12] DEP, *Oil and Gas Annual Production Reports, 2014*, *available at* http://www.dep.state.fl.us/water/mines/oil_gas/production.htm.
[13] EIA, Florida State Profile and Energy Estimates, *Analysis*, http://www.eia.gov/state/analysis.cfm?sid=FL (last visited Jan. 11, 2016). *See also*, s. 377.242(1), F.S.
[14] Email from Andrew Ketchel, Director, Office of Legislative Affairs, DEP (Jan. 7, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).
[15] DEP, *Oil and Gas Annual Production Reports, 2014*, *available at* http://www.dep.state.fl.us/water/mines/oil_gas/production.htm.
[16] DEP, *Hydraulic Fracturing Background and Recommendations* (Sept. 29, 2015) *available at* http://archive.news-press.com/assets/pdf/A4195556107.PDF.
[17] California Council on Science and Technology Lawrence Berkeley National Laboratory, *An Independent Assessment of Well Stimulation in California* (CA Study), Vol. 1, Well stimulation technologies and their past, present, and potential future use in California, January 2015, pg. 56 and pg. 69, *available at* http://ccst.us/publications/2015/2015SB4-v1.php.
[18] DEP, *Collier Oil Drilling*, http://www.dep.state.fl.us/secretary/oil/collier_oil.htm (last visited Jan. 11, 2016).
[19] *Id*.
[20] DEP, *Frequently Asked Questions Regarding the Oil and Gas Permitting Process*, http://www.dep.state.fl.us/water/mines/oil_gas/docs/faq_og.pdf (last visited Jan. 11, 2016).
[21] Energy Policy Act of 2005, H.R. 6, 109th Cong. (2005-2006).

thereby removing these operations from the scope of the CWA.[22] Thus, the Energy Policy Act effectively exempted non-diesel hydraulic fracturing from federal law.[23]

In an attempt to regulate hydraulic fracturing on federal and tribal lands, the Bureau of Land Management (BLM) in March 2015, published final rules governing hydraulic fracturing.[24] The rules were to take effect on June 24, 2015, however, the United States District Court for the District of Wyoming granted a preliminary injunction, holding that the BLM lacked the authority to regulate hydraulic fracturing.[25] The BLM is enjoined from enforcing the final rules pending the finality of the rule challenge.

While direct regulation over well stimulation techniques at the federal level is limited, there are several federal statutes that have been applied to regulate the impacts of oil and gas extraction more generally. The Oil and Gas Extraction Effluent Guidelines and Standards regulate wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities.[26] The regulations apply to conventional and unconventional extraction with the exception of extractions of coalbed methane.[27] These standards are incorporated in the National Pollutant Discharge Elimination System (NPDES).

Because it is possible that oil and gas activities could result in the release of hazardous substances into the environment at or under the surface in a manner that may endanger public health or the environment, these activities are regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[28] While any recovered petroleum or natural gas is exempt, other hazardous substances that result from oil or gas production, including fracturing fluids, fall under the act and if a release were to occur, the facility owner and operator could face liability under CERCLA.[29]

To ensure that employees who may be exposed to hazardous chemicals in the workplace are aware of the chemicals' potential dangers, manufacturers and importers must obtain or develop

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[22] The EPA rule implementing the CWA amendment was challenged and the Ninth Circuit Court of Appeals vacated the rule. Oil and gas construction facilities remain subject to stormwater permitting requirements, as well as, NPDES permit requirements. *See* William J. Brady, *Hydraulic Fracturing Regulation in the United States: The Laissez-faire approach of the Federal government and varying state regulations* at 8 (Unv. of Denver Sturm College of Law), *available at* http://www.law.du.edu/documents/faculty-highlights/Intersol-2012-HydroFracking.pdf.

[23] Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009), *available at* http://law.uh.edu/faculty/thester/courses/Emerging%20Tech%202011/Wiseman%20on%20Fracking.pdf.

[24] Under the final BLM regulations, the term "hydraulic fracturing" is defined as "those operations conducted in an individual wellbore designed to increase the flow of hydrocarbons from the rock formation to the wellbore through modifying the permeability of reservoir rock by applying fluids under pressure to fracture it. Hydraulic fracturing does not include enhanced secondary recovery such as water flooding, tertiary recovery, recovery through steam injection, or other types of well stimulation operations such as acidizing."

[25] State of Wyo. vs. U.S. Dept. of the Int., No. 2: 15-CB-043-SWS (D. Wyo. Sept. 30, 2015) (order granting preliminary injunction), *available at* http://www.wyd.uscourts.gov/pdfforms/orders/15-cv-043%20130%20order.pdf.

[26] EPA, *Oil and Gas Extraction Effluent Guidelines*, http://www.epa.gov/eg/oil-and-gas-extraction-effluent-guidelines (last visited Jan. 11, 2016).

[27] *Id*.

[28] Adam Vann, Brandon J. Murrill, & Mary Tiemann, Cong. Research Serv., R 43152, *Hydraulic Fracturing: Selected Legal Issues*, pg. 12 (Sept. 26, 2014), *available at* https://www.fas.org/sgp/crs/misc/R43152.pdf.

[29] *Id*. at 13.

Material Safety Data Sheets (MSDS) for hydraulic fracturing chemicals that are hazardous according to the Occupational Safety and Health Administration (OSHA) standards. MSDS sheets must be maintained for hazardous chemicals at each job site and must, at a minimum, include the chemical names of substances that are considered hazardous under OSHA regulations.[30]

State

States have primary jurisdiction and authority over the regulation of oil and gas activities. Almost all states with economically viable production wells have extensive regulatory programs in place for permitting and monitoring oil and gas activities. Recent advances in technology and the widespread use of well stimulation techniques, particularly hydraulic fracturing, have motivated some states to update and revise their oil and gas regulations to specifically address such techniques or to ban certain techniques altogether.[31]

The DEP has regulatory authority over oil and gas resources in Florida. The Division of Water Resource Management (Division) within DEP oversees the permitting process for drilling production and exploration. The DEP adopted Rule Chapters 62C-25 through 62C-30 of the Florida Administrative Code to implement and enforce the regulation of oil and gas resources. The Division has jurisdiction and authority over all persons and property necessary to administer and enforce all laws relating to the conservation of oil and gas.[32] Drilling and exploration is not authorized or is subject to local governmental approval in tidal waters, near improved beaches, and within municipal boundaries.[33]

When issuing permits for oil or gas exploration or extraction, the Division is required to consider the nature, character, and location of the lands involved; the nature, type, and extent of ownership of the applicant; and the proven or indicated likelihood of the presence of oil, gas, or related minerals on a commercially viable basis.[34] The DEP is required to ensure that all precautions are taken to prevent the spillage of oil or other pollutants in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products.[35] Additionally, the DEP is authorized to issue rules to require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.[36]

Before any person begins work other than environmental assessments or surveying at the site of a proposed drilling operation, a permit to drill is required and a preliminary site inspection must be conducted by the DEP.[37] An application for a permit to drill must include a proposed casing

[30] *Id*. at 22.
[31] Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009). *See also* State of Wyo. vs. U.S. Dept. of the Int., No. 2: 15-CB-043-SWS, pg. 40 (D. Wyo. Sept. 30, 2015) listing Wyoming, Colorado, Utah, North Dakota, Alaska, Illinois, Michigan, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas, California, Montana, and Nevada as states with regulations in places addressing hydraulic fracturing.
[32] Section 377.21(1), F.S.
[33] Section 377.24, F.S.
[34] Section 377.241, F.S.
[35] Section 377.22, F.S.
[36] *Id*.
[37] Fla. Admin. Code R. 62C-26.003.

and cementing program and a location plat survey.[38] Each drilling permit is valid for one year and may be extended for an additional year.[39] Before a well is used for its intended purpose, a permit to operate the well must be obtained.[40] Operating permits are valid for the life of the well; however, every five years the DEP is required to perform a comprehensive field inspection and the permit must be re-certified.[41] Each application and subsequent re-certification must include the appropriate fee; bond or security coverage; a spill prevention and cleanup plan; flowline specification and an installation plan; containment facility certification; and additional reporting and data submissions, such as a driller's logs and monthly well reports.[42] Before a permit is granted, the owner or operator is required to post a bond or other form of security for each well. The amounts vary depending upon the well depth.[43] In lieu of posting a bond or security for each well, the owner or operator may file a blanket bond for multiple operations in the amount of $1,000,000, which may cover up to ten wells.[44]

A separate permit is not required for the performance of well stimulation techniques, the techniques are regulated as workovers.[45] Rule 62C-25.002(61) of the Florida Administrative Code defines the term "workover" as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates." An operator is required to notify the DEP before commencing a workover procedure and must submit a revised Well Record[46] to the DEP within 30 days after the workover.[47]

A person that violates any statute, rule, regulation, order, or permit of the Division relating to the regulation of oil or gas resources or who refuses inspection by the Division is liable for damages caused to the air, waters, or property of the state; for reasonable costs in tracing the source of the discharge, in controlling and abating the source and the pollutants; and in restoring the air, waters, and property.[48] Such persons are also subject to judicial imposition of a civil penalty up to $10,000 for each offense.[49] Each day during any portion of which a violation occurs constitutes a separate offense.[50]

[38] *Id*.
[39] *Id*.
[40] Fla. Admin. Code R. 62C-26.008.
[41] Fla. Admin. Code Rules 62C-25.006 and 62C-26.008.
[42] Fla. Admin. Code Rule 62C-26.008.
[43] Fla. Admin. Code Rule 62C-26.002.
[44] *Id*.
[45] *See e.g.*, s. 377.22, F.S., requiring the Division to adopt rules to "regulate the shooting, perforating, and chemical treatment of wells" and to "regulate secondary recovery methods, in the introduction of gas, air, water, or other substance in producing formations." *See also*, s. 377.26, F.S., requiring the Division to "take into account technological advances in drilling and production technology, including, but not limited to, horizontal well completions in the producing formation using directional drilling methods."
[46] Fla. Admin. Code R. 62C-26.008.
[47] Fla. Admin. Code R. 62C-29.006.
[48] Section 377.37(1)(a), F.S.
[49] *Id*.
[50] *Id*.

Local

As most states with oil and gas interests have extensive regulatory programs governing oil and gas activities, the issue relating to what extent local governments may regulate oil and gas activities within their boundaries has arisen. In some areas local governments have banned or limited certain well stimulation techniques within their boundaries with varying success. In Colorado a number of municipalities passed bans on hydraulic fracturing within their city limits, but state courts have overturned the bans recognizing that the state's interest in the efficient and fair development of its resources may otherwise be threatened by inconsistent ordinances.[51] In Pennsylvania similar bans have been passed, and Pennsylvania state courts have held that municipalities retain their authority to limit oil and gas development within their borders, effectively authorizing them to regulate the "where, but not the how, of hydrocarbon recovery."[52]

While cities and counties do not operate oil and gas permitting programs in Florida, some through their land use regulations or zoning ordinances require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.[53] When authorizing oil and gas activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.[54]

Section 377.24(5), F. S., restricts the DEP from issuing a permit for drilling within the corporate limits of a municipality unless the municipality adopts a resolution approving the permit. Three municipalities, Estero, Bonita Springs, and Coconut Creek have banned well stimulation techniques by ordinance.[55] Additionally, many counties and cities have passed resolutions supporting various types of bans and moratoriums relating to well stimulation techniques.[56]

Environmental Concerns

There are a variety of environmental concerns relating to well stimulation techniques. Potential impacts and concerns include: groundwater or surface water contamination; stress on water supplies; inadequate wastewater management and disposal; and air quality degradation.[57] Because well stimulation techniques are applied to so many types of formations using a variety of methods and fluids, environmental impacts vary depending on factors such as toxicity of the

[51] David L. Schwan, *Preemption Update: Local Attempts to Preempt State Regulation of Hydraulic Fracturing*, pg. 5, *available at* http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2015-joint-cle/written_materials/01_fracked_up_preemption_update.authcheckdam.pdf/.
[52] *Id*. at 6.
[53] Florida League of Cities, *Legislative Issue Briefs, Hydraulic Fracturing (Fracking)*, http://www.floridaleagueofcities.com/Assets/Files/Advocacy/2016_IB_Fracking.pdf (last visited Jan. 7, 2016). *Also see e.g.*, Lee County's Land Development Code s. 34-145(c).
[54] *Id*.
[55] Ordinance No. 2015-19 bans well stimulation within and below the corporate boundaries of the Village of Estero; Article IV, Section 13-1000 of Coconut Creek's Land Development Code bans well stimulation in Coconut Creek; and Chapter 4, Article VI, Division 15, Section 4-1380 of Bonita Spring's Land Development Code bans well stimulation in Bonita Springs, Florida.
[56] See Food & Water Watch, *Local Regulations Against Fracking*, http://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking#florida (last visited Jan. 7, 2016).
[57] EPA, Natural Gas Extraction - Hydraulic Fracturing, http://www.epa.gov/hydraulicfracturing (last visited Jan. 11, 2016).

fluid used; the closeness of the fracture zone to underground drinking water; the existence of a barrier between the fracture formation and other formations; and how wastewater is disposed.[58]

Water Quality

A major environmental concern is the impact well stimulation techniques may have on drinking water quality. The EPA estimated that 6,800 sources of drinking water are within one mile of a well that has been hydraulically fractured.[59] Sources of drinking water may be contaminated through the release of gas-phase hydrocarbons, in what is known as stray gas migration, through the movement of liquid or gases out of the well if well casing or cementing is too weak or if it fails.[60] While concerns related to inadequate well casing or cementing are not unique to hydraulic fracturing, horizontally drilled, hydraulically fractured wells pose more production challenges because they are subject to greater pressures.[61]

Mitigating measures, such as extending the casing farther below groundwater resources and pressure testing the well casing before the injection of fluids, may work to prevent well casing failures. Blowout preventers also help control and prevent pressure build-ups. Furthermore, hydraulically fractured wells in shale formations are usually drilled deeper than vertical wells and, therefore, the vertical separation between the formation and the drinking water resource is greater.[62] Thousands of feet of rock layers typically overlay the produced portion of shale and serve as a barrier to contamination.[63] The vast majority of Florida's public water supply is obtained from groundwater sources, specifically from the Floridan aquifer system which underlies the state of Florida.[64] Areas in which oil and gas have been extracted have an upper confining unit that is generally greater than 100 feet, which serves as a barrier to contamination.[65]

Fractures created during hydraulic fracturing can intersect nearby wells or their fracture networks, resulting in the flow of fluids into those wells and to underground drinking water resources. These "frac-hits" are more likely to occur if wells are close to each other or are on the same well pad.[66] In Florida, horizontal wells deeper than 7,000 feet have more stringent spacing requirements.[67]

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[58] Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009), *available at* http://law.uh.edu/faculty/thester/courses/Emerging%20Tech%202011/Wiseman%20on%20Fracking.pdf.

[59] U.S. Environmental Protection Agency (EPA), *DRAFT Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, Executive Summary*, pg. 6 (2015), *available at* http://www2.epa.gov/sites/production/files/2015-07/documents/hf_es_erd_jun2015.pdf.

[60] Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8334-8348, 8336 (2014).

[61] Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, pg. 8 (Apr. 22, 2015), *available at* https://www.fas.org/sgp/crs/misc/R43148.pdf.

[62] *Id*. at 7.

[63] *Id*.

[64] DEP, *Aquifers*, https://fldep.dep.state.fl.us/swapp/Aquifer.asp (last visited Jan. 11, 2016).

[65] U.S. Geological Survey (USGS), *Conceptual Model of the Floridan*, http://fl.water.usgs.gov/floridan/conceptual-model.html (last visited Dec. 18, 2015).

[66] U.S. Environmental Protection Agency (EPA), *DRAFT Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, Executive Summary*, ES-16 (2015).

[67] Fla. Admin. Code R. 62C-26.004(5).

Surface water contamination may occur as a result of the inadequate storage and disposal of produced waters, which includes fractured fluids or "flowback." Approximately 10-40 percent of the volume of the injected fracturing fluids returns to the surface after hydraulic fracturing.[68] In most produced waters the concentrations of toxic elements, such as radioactive radium, are positively correlated with salinity, which suggests that many of the potential water quality issues associated with produced waters may be attributable to the geochemistry of the brines within the shale formations.[69] In Florida, all spills of waste material must be immediately reported to the Division and the appropriate federal agencies, and the owner or operator is responsible for the costs of cleanup or other damage incurred by the state.[70]

Water Supply

The amount of water used during the performance of a well stimulation depends on the well depth, formation geology, and the composition of the fracturing fluid. In some cases, over 90 percent of the fracturing fluid is made up of water and each hydraulically fractured well could require thousands to millions of gallons.[71] While the total water use for well stimulation techniques is relatively low compared to other water users,[72] wells that are good candidates for such techniques are usually located near the same source and as a result the collective impact of water withdrawals could result in increased competition among users.[73] To decrease the competition among users, some states have implemented pilot projects evaluating the feasibility of reusing produced waters or other brackish or wastewaters.[74]

Wastewater Management and Disposal

As the use of hydraulic fracturing has increased, so has the volume of wastewaters that are generated. Produced water is the water that comes to the surface naturally, as part of the oil and natural gas production process, and for a hydraulically fractured well, includes flowback. The vast majority of produced water is disposed of using injection wells. Injection wells are permitted under the Underground Injection Control (UIC) program.[75] The goal of the UIC program is the effective isolation of injected fluids from underground sources of drinking water.[76] Class II injection wells are designed to inject fluids associated with the production of oil and natural gas or fluids used to enhance hydrocarbon recovery. As unconventional oil and gas wells are being drilled at rapid rates, space for underground injection wells is becoming limited in some areas. Another issue that is developing with the increase in injection wells is the concern

[68] Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8334-8348, 8340 (2014).
[69] *Id*.
[70] Section 377.371, F.S.
[71] EPA, *Executive Summary* at 6.
[72] Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8348, 8343 (2014).
[73] Hannah Wiseman, *Risk and Response in Fracturing Policy*, 84 Unv. of Col. L. Rev. 729-817, 776 (2009), *available at* http://lawreview.colorado.edu/wp-content/uploads/2013/11/11.-Wiseman_For-Printer_s.pdf.
[74] *Id*. at 770.
[75] EPA, Underground Injection Control Program, http://water.epa.gov/type/groundwater/uic/ (last visited Jan. 11, 2016).
[76] *Id*.

that the deep-well disposal of oil and gas production wastewater is responsible for seismic activity in certain areas.[77] The Oklahoma Geological Survey determined that the primary suspected source of triggered seismicity is from the injection of produced water associated with oil and gas production in disposal wells.[78]

Additionally, in some states the produced waters are being sent to treatment facilities that are not equipped to treat wastewater from hydraulically fractured wells.[79] In April 2015, the EPA under the authority of the Clean Water Act published proposed rules for the oil and gas extraction category which would set pretreatment standards for discharges of wastewater from unconventional oil and gas operations to a publicly owned treatment works plant.[80]

Air Quality

The key emissions associated with unconventional oil and natural gas production include methane, volatile organic compounds (VOCs), nitrogen oxides, sulfur dioxide, particulate matter, and various hazardous air pollutants.[81] In 2012, the EPA issued New Source Performance Standards that require reductions in emissions from VOCs from hydraulically fractured natural gas wells.[82] These rules were the first federal air standards for natural gas wells that were hydraulically fractured.[83] In August 2015, the EPA proposed additional requirements that would complement the 2012 standards, including requiring operators of hydraulically fractured oil wells, in addition to natural gas wells, to use "green completion" and a proposal to require owners or operators to find and repair leaks, which can be significant causes of methane and VOC pollution.[84]

Chemical Disclosure

Fracturing fluids vary in composition based on a variety of factors, including, but not limited to, the geologic type of formation being fractured, temperature, the sensitivity of the reservoir system to water.[85] Fracturing fluids are commonly composed of water, sand, a friction reducer, acid, biocide, a breaker, a stabilizer, a cross linker, gel, a non-emulsifier, a scale inhibitor, a surfactant, a pH adjuster agent, a gelling agent, and an iron control.[86] FracFocus is a publicly

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[77] *See* Peter Folger & Mary Tiemann, Cong. Research Serv., R 43836, *Human-Induced Earthquakes from Deep-Well Injection: A Brief Overview*, (May 12, 2015) *available at* https://www.fas.org/sgp/crs/misc/R43836.pdf.
[78] Oklahoma Geological Survey, *Statement on Oklahoma Seismicity* (Apr. 21, 2015), http://wichita.ogs.ou.edu/documents/OGS_Statement-Earthquakes-4-21-15.pdf (last visited Jan. 12, 2016).
[79] Wiseman, *Risk and Response in Fracturing Policy* at 768-769.
[80] EPA, *Unconventional Extraction in the Oil and Gas Industry*, http://www2.epa.gov/eg/unconventional-extraction-oil-and-gas-industry (last visited Jan. 11, 2016).
[81] Ratner & Tiemann, R 43148 at 9.
[82] EPA, *Oil and Natural Gas Air Pollution Standards, Regulatory Actions*, http://www3.epa.gov/airquality/oilandgas/actions.html (last visited Jan. 7, 2016).
[83] *Id*.
[84] *EPA, Overview of Final Amendments to Air Regulations for the Oil and Natural Gas Industry: Fact Sheet*, August 2015, http://www3.epa.gov/airquality/oilandgas/pdfs/og_fs_081815.pdf.
[85] Gallegos, T.J., and Varela, B.A., *Trends in hydraulic fracturing distributions and treatment fluids, additives, proppants, and water volumes applied to wells drilled in the United States from 1947 through 2010—Data analysis and comparison to the literature: U.S. Geological Survey Scientific Investigations Report 2014–5131*, pg. 1 (2015), *available at* http://pubs.usgs.gov/sir/2014/5131/pdf/sir2014-5131.pdf.
[86] FracFocus Chemical Disclosure Registry, *Why Chemicals are Used*, https://fracfocus.org/chemical-use/why-chemicals-are-used (last visited Jan. 11, 2016).

accessible database managed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission and was created to provide public access to reported chemicals used for hydraulic fracturing.[87] There are 106,132 well sites registered and the website lists over 50 chemicals that are used most often.[88] In February 2015, the Ground Water Protection Council reported that 27 states require chemical disclosure relating to hydraulic fracturing operations, and at least 18 of these states allow or require companies to use FracFocus.[89]

Because unique formulas are used based on the geology of each formation, the exact contents and proportions of various chemicals within the mixtures may not be common knowledge within the industry and could possibly be claimed as trade secret.[90] Therefore, while some states require specific fracturing fluid compositions to be disclosed to the state agencies, confidentiality provisions are provided to protect such trade secret information.

III. Effect of Proposed Changes:

Section 1 amends s. 377.06, F.S., to preempt all matters relating to the regulation of the exploration, development, production, processing, storage, and transportation of oil and gas to the state. The bill declares that any such existing ordinance or regulation is void, with the exception of zoning ordinances adopted before January 1, 2015.

Currently, three municipalities have banned well stimulation techniques within their boundaries and because these ordinances were adopted after January 1, 2015, the ordinances would be void.

Section 2 amends s. 377.19, F.S., to define the term "high-pressure well stimulation" as "all stages of a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore." The bill specifies that the term does not include "well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore."

As defined, the term "high-pressure well stimulation" includes both hydraulic fracturing and acid fracturing and, consequently, a permit will be required before the performance of either technique. However, matrix acidizing, as it is performed at a pressure that does not exceed the fracture gradient, is outside the scope of the definition and would remain regulated as a workover.

Section 3 amends s. 377.22, F.S., to require the Department of Environmental Protection (DEP) to adopt rules for the regulation of high-pressure well stimulations, as well as rules relating to oil and gas well operations generally. The bill:

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[87] *Id*.
[88] *Id*.
[89] Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, pg. 12 (Apr. 22, 2015), *available at* https://www.fas.org/sgp/crs/misc/R43148.pdf.
[90] Hannah Wiseman, *Trade Secrets, Disclosure, and Dissent in a Fracturing Energy Revolution*, 111 COLUM. L. REV. SIDEBAR 1, 6-7 (2011), *available at* http://www.columbialawreview.org/wp-content/uploads/2011/01/1_Wiseman.pdf.

- Requires a bond or other form of security to be conditioned upon properly drilling, casing, producing, and operating each well and upon restoration of the area.
- Specifies that inspections are required during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations.
- Authorizes the DEP to evaluate the history of prior adjudicated, uncontested, or settled violations committed by the permit applicant or the applicant's affiliated entities of any substantive and material rule or law pertaining to the regulation of oil or gas.

Section 4 amends s. 377.24, F.S., to require a person who desires to perform a high-pressure well stimulation to provide notice to the DEP, pay a fee, and receive a permit before the performance of a high-pressure well stimulation. The bill provides that a permit may authorize a single activity or multiple activities. The bill provides that an application for permission to perform a high-pressure well stimulation may only be denied by the Division for just and lawful cause.

The bill removes the prohibition against the granting of permits for drilling a gas or oil well within the corporate limits of a municipality without the approval of the governing authority of the municipality by resolution.

The bill prohibits the DEP from approving a permit authorizing high-pressure well stimulations until rules are adopted for high-pressure well stimulations which are based upon the findings of the study on high-pressure well stimulations and such rules take effect. The bill requires the rules for high-pressure well stimulation to be submitted to the President of the Senate and the Speaker of the House of Representatives and prohibits such rules from taking effect until they are ratified by the Legislature.

Section 5 amends s. 377.241, F.S., to add criteria the DEP must consider and be guided by relating to the issuance of permits for high-pressure well stimulations; specifically, whether the high-pressure well stimulation as proposed is designed to ensure that the groundwater near the well location or through which the well will be or has been drilled is not contaminated as a result of the high-pressure well stimulation and whether the performance of the high-pressure well stimulation is consistent with the public policy of the state to safeguard the health, property, and public welfare of the citizens of the state.[91]

The bill specifies that a permit may be denied or specific conditions of a permit may be required, including increased bonding and monitoring, if the permit applicant or affiliated entity has a history of prior adjudicated, uncontested, or settled violations of any substantive and material rule or law pertaining to the regulation of oil and gas, including violations that occurred outside of Florida.

Section 6 amends s. 377.242, F.S., to specify that the DEP has the authority to issue permits for the performance of a high-pressure well stimulation. The bill clarifies that a permittee agrees to inspections during the installation and cementing of the casing, during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations.

[91] Section 377.06, F.S.

Section 7 amends s. 377.2425, F.S., to require the permit applicant or operator to provide surety that the performance of a high-pressure well stimulation will be conducted in a safe and environmentally compatible manner.

Section 8 creates s. 377.2436, F.S., to require the DEP to conduct a study on high-pressure well stimulations. The study must include all of the following:

- An evaluation of the underlying geologic features in the counties where oil wells have been permitted and an analysis of the potential impact that high-pressure well stimulations and wellbore construction may have on the underlying geologic features;
- An evaluation of the potential hazards and risks that high-pressure well stimulations pose to surface water or groundwater resources;
- An assessment of the potential impact of high-pressure well stimulations on drinking water resources and an identification of the main factors affecting the severity and frequency of impacts;
- An analysis of the potential for the use or reuse of recycled water in well stimulation fluids, while meeting the appropriate water quality standards;
- A review and evaluation of the potential for groundwater contamination from conducting high-pressure well stimulations under or near wells that have been previously abandoned and plugged;
- An identification of a setback radius from plugged and abandoned wells that could be impacted by high-pressure well stimulations; and
- A review and evaluation of the ultimate disposition of high-pressure well stimulation fluids after use in high-pressure well stimulation processes.

The bill specifies that the DEP must continue conventional oil and gas business operations during the performance of the study and that there is not a moratorium on the evaluation and issuance of permits for conventional drilling, explorations, conventional completions, or conventional workovers during the performance of the study.

The bill requires the study to be subject to an independent scientific peer review, and the findings of the study to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2017. It also requires the results of the study to be posted to the DEP's website.

The bill prohibits the DEP from adopting rules for high-pressure well stimulations until the findings of the study have been submitted to the Legislature. The bill requires the DEP to adopt rules by March 1, 2018, to implement the findings of the study if such rules are warranted to protect public health, safety, and the environment.

Section 9 amends s. 377.37, F.S., to increase the civil penalty from $10,000 per offense per day to $25,000 per offense per day.

Section 10 creates s. 377.45, F.S., to require the DEP to designate the national chemical registry FracFocus as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. In addition to providing the following information to the DEP

as part of the permitting process, the bill requires a service provider, vendor, or owner or operator to report all of the following information, at a minimum, to the DEP for submission to FracFocus:

- The service provider, vendor, or owner or operator's name;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The American Petroleum Institute (API) well number;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation;
- Each chemical ingredient that is subject to the Occupational Safety and Health Administration (OSHA) regulations set forth in 29 C.F.R. s. 1910.1200(g)(2)[92] and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed; and
- The trade or common name and the Chemical Abstract Service (CAS) number for each chemical ingredient.

The bill requires the DEP to report this information to FracFocus, excluding any information that is subject to the Uniform Trade Secrets Protection Act as set forth in chapter 688, F.S. If FracFocus cannot accept and make publicly available such information, the DEP is required to post the information, excluding trade secret information, on its website.

The service provider, vendor, owner or operator is required to report the chemical disclosure information within 60 days of the initiation of the high-pressure well stimulation. The service provider, vendor, well owner, or operator must also notify the DEP if any chemical ingredient not previously reported was intentionally included and used for the purpose of performing a high-pressure well stimulation.

The new section created by the bill (s. 377.45, F.S.) does not apply to ingredients that are unintentionally added to the high-pressure well stimulation, occur incidentally, or are otherwise unintentionally present in the high-pressure well stimulation.

The bill provides the DEP with rule authority to administer this section.

Section 11 amends s. 377.07, F.S., to rename the Division of Resource Management to the Division of Water Resource Management.

Section 12 amends s. 377.10, F.S., to make technical changes.

Section 13 amends s. 377.243, F.S., to make technical changes.

Section 14 amends s. 377.244, F.S., to make technical changes.

[92] 29 C.F.R. s. 1910.1200(g)(2) requires chemical manufacturers and importers to insure that the safety data sheets have the required information. See Appendix D to s. 1910.1200 - Safety Data Sheets, *available at* https://www.osha.gov/dsg/hazcom/hazcom-appendix-d.html.

Section 15 provides an appropriation of $1,000,000 in nonrecurring funds from the General Revenue Fund for the 2016-2017 fiscal year to the DEP to conduct a study on high-pressure well stimulations.

Section 16 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. (18)(b) of the Florida Constitution may apply because the bill restricts the authority of counties and municipalities to establish programs that regulate any activity related to oil and gas exploration, production, processing, storage, and transportation. No county or municipality currently operates such permitting program.[93] Therefore, the mandates exception for insignificant fiscal impact may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 318 authorizes a new permit fee for high-pressure well stimulations and increases fines from $10,000 per offense per day to $25,000 per offense per day. The increased revenue associated with the new permit fee is indeterminate. Should violations occur, the increased revenue associated with the increased fine will have a positive indeterminate fiscal impact to the Minerals Trust Fund within the DEP.

B. Private Sector Impact:

The bill increases penalties from $10,000 to $25,000 per offense, which will have a negative fiscal impact on private companies that are found in violation of the law.

C. Government Sector Impact:

The Department of Environmental Protection (DEP) will incur additional costs associated with permitting high-pressure well stimulation techniques. The regulatory costs and permit fee(s) will be based on the permitting requirements to be established through the

[93] Florida League of Cities, *Legislative Issue Briefs, Hydraulic Fracturing (Fracking)*, http://www.floridaleagueofcities.com/Assets/Files/Advocacy/2016_IB_Fracking.pdf (last visited Jan. 7, 2016).

rulemaking process. According to the DEP, existing staff is sufficient to handle the anticipated workload increases.[94] The increased revenues associated with permit fees is indeterminate.

The bill increases the penalty for violations from $10,000 per offense to $25,000 per offense. Should violations occur, the increased revenue will have a positive fiscal impact to the Minerals Trust Fund within the DEP.

According to the DEP, the costs associated to amend Rules 62C-25 through 30, of the Florida Administrative Code, can be absorbed within the DEP's existing budget.

The estimated cost for the study on high pressure well stimulations is $1 million.[95] CS/SB 318 provides an appropriation of $1 million from nonrecurring general revenue for the study.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the DEP to conduct a study evaluating underlying geologic features. The language refers only to counties in which oil wells have been permitted and, therefore, may not include counties that have only permitted gas wells or counties where applications have been submitted for exploratory permits. The DEP has represented that any variation in the underlying geologic features between the counties where oil wells have been permitted and counties where gas wells or exploratory permits have been applied for are negligible for the purposes of the study.[96]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 377.06, 377.19, 377.22, 377.24, 377.241, 377.242, 377.2425, 377.37, 377.07, 377.10, 377.243, and 377.244.

This bill creates the following sections of the Florida Statutes: 377.2436 and 377.45.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on January 13, 2016:
The CS authorizes the DEP to evaluate the prior adjudicated, uncontested, or settled

[94] DEP, *Senate Bill 318 Agency Legislative Bill Analysis*, pg. 4 (Nov. 6, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[95] *Id*.
[96] Email from Andrew Ketchel, Director, Office of Legislative Affairs, DEP (Jan. 7, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

violations committed by permit applicants as a basis for permit denial or imposition of specific permit conditions.

- The CS authorizes the DEP to consider as a criterion for issuing a permit for a high-pressure well stimulation, whether the high-pressure well stimulation as proposed is designed to ensure that the groundwater near the well location is not contaminated as a result of the high-pressure well stimulation. Additionally, the CS clarifies that the study provide a review and evaluation of the potential for groundwater contamination from conducting high-pressure well stimulations near well that have been previously abandoned and plugged.
- The CS prohibits the DEP from adopting rules for high-pressure well stimulations until the findings of the study have been submitted to the Legislature and the CS clarifies that the rules are to be based upon the findings of the study. Additionally, the CS requires legislative ratification of the rules prior to such rules taking effect and prohibits the DEP from issuing permits for high-pressure well stimulations until such rules take effect.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Richter

592-02111-16 2016318c1

A bill to be entitled

An act relating to the regulation of oil and gas resources; amending s. 377.06, F.S.; preempting the regulation of all matters relating to the exploration, development, production, processing, storage, and transportation of oil and gas; declaring existing ordinances and regulations relating thereto void; providing an exception for certain zoning ordinances; amending s. 377.19, F.S.; applying the definitions of certain terms to additional sections of ch. 377, F.S.; revising the definition of the term "division"; conforming a cross-reference; defining the term "high-pressure well stimulation"; amending s. 377.22, F.S.; revising the rulemaking authority of the Department of Environmental Protection; amending s. 377.24, F.S.; requiring that a permit be obtained before the performance of a high-pressure well stimulation; specifying that a permit may authorize single or multiple activities; deleting provisions that prohibit the Division of Water Resource Management from granting permits to drill gas or oil wells within the limits of a municipality without approval of the governing authority of the municipality; prohibiting the department from approving permits for high-pressure well stimulation until certain rules are adopted and take effect; requiring legislative ratification of such rules; amending s. 377.241, F.S.; requiring the Division of Water Resource Management to give consideration to and be guided by certain additional criteria when issuing permits; amending s. 377.242, F.S.; authorizing the department to issue

592-02111-16 2016318c1

permits for the performance of a high-pressure well stimulation; revising permit requirements that permitholders agree not to prevent division inspections; amending s. 377.2425, F.S.; requiring an applicant or operator to provide surety that performance of a high-pressure well stimulation will be conducted in a safe and environmentally compatible manner; creating s. 377.2436, F.S.; requiring the department to conduct a study on high-pressure well stimulation; providing study criteria; requiring the study to be submitted to the Governor and Legislature and posted on the department website; prohibiting the department from adopting rules until the study has been submitted to the Legislature; requiring the department to adopt rules under certain conditions by a specified date; amending s. 377.37, F.S.; increasing the maximum amount of a civil penalty; creating s. 377.45, F.S.; requiring the department to designate the national chemical disclosure registry as the state's registry; requiring service providers, vendors, and well owners or operators to report certain information to the department; requiring the department to report certain information to the national chemical registry; providing applicability; requiring the department to adopt rules; amending ss. 377.07, 377.10, 377.243, and 377.244, F.S.; making technical changes; conforming provisions to changes made by the act; providing an appropriation; providing an effective date.

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

Section 1. Section 377.06, Florida Statutes, is amended to read:

377.06 Public policy of state concerning natural resources of oil and gas; preemption.—

(1) It is ~~hereby declared~~ the public policy of this state to conserve and control the natural resources of oil and gas in this state, and the products made from oil and gas in this state; to prevent waste of natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land in which the natural resources lie, of the owners and producers of oil and gas resources and the products made from oil and gas, and of others interested in these resources and products; and to safeguard the health, property, and public welfare of the residents of this state and other interested persons ~~and for all purposes indicated by the provisions in this section~~.

(2) ~~Further,~~ It is the public policy of this state ~~declared~~ that underground storage of natural gas is in the public interest because underground storage promotes conservation of natural gas~~,~~ ~~,~~ makes gas more readily available to the domestic, commercial, and industrial consumers of this state~~,~~ ~~,~~ and allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods of peak demand. It is not the intention of this section to limit, restrict, or modify in any way the provisions of this law.

(3) The Legislature declares that all matters relating to

the regulation of the exploration, development, production, processing, storage, and transportation of oil and gas are preempted to the state, to the exclusion of all existing and future ordinances or regulations relating thereto adopted by any county, municipality, or other political subdivision of the state. Any such existing ordinance or regulation is void. A county or municipality may, however, enforce an existing zoning ordinance adopted before January 1, 2015, if the ordinance is otherwise valid.

Section 2. Section 377.19, Florida Statutes, is amended to read:

377.19 Definitions.—As used in ss. 377.06, 377.07, and 377.10-377.45 ~~377.10-377.40~~, the term:

(1) "Completion date" means the day, month, and year that a new productive well, a previously shut-in well, or a temporarily abandoned well is completed, repaired, or recompleted and the operator begins producing oil or gas in commercial quantities.

(2) "Department" means the Department of Environmental Protection.

(3) "Division" means the Division of Water Resource Management of the Department of Environmental Protection.

(4) "Field" means the general area that is underlaid, or appears to be underlaid, by at least one pool. The term includes the underground reservoir, or reservoirs, containing oil or gas, or both. The terms "field" and "pool" mean the same thing if only one underground reservoir is involved; however, the term "field," unlike the term "pool," may relate to two or more pools.

(5) "Gas" means all natural gas, including casinghead gas,

and all other hydrocarbons not defined as oil in subsection (16) ~~(15)~~.

(6) "High-pressure well stimulation" means all stages of a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. The term does not include well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore.

(7) ~~(6)~~ "Horizontal well" means a well completed with the wellbore in a horizontal or nearly horizontal orientation within 10 degrees of horizontal within the producing formation.

(8) ~~(7)~~ "Illegal gas" means gas that has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the division, as distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(9) ~~(8)~~ "Illegal oil" means oil that has been produced within the state from any well or wells in excess of the amount allowed by rule, regulation, or order of the division, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed, which is "legal oil."

(10) ~~(9)~~ "Illegal product" means a product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as

distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(11) ~~(10)~~ "Lateral storage reservoir boundary" means the projection up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.

(12) ~~(11)~~ "Native gas" means gas that occurs naturally within this state and does not include gas produced outside the state, transported to this state, and injected into a permitted natural gas storage facility.

(13) ~~(12)~~ "Natural gas storage facility" means an underground reservoir from which oil or gas has previously been produced and which is used or to be used for the underground storage of natural gas, and any surface or subsurface structure, or infrastructure, except wells. The term also includes a right or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including any necessary or reasonable reservoir protective area as designated for the purpose of ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof. The term does not mean a transmission, distribution, or gathering pipeline or system that is not used primarily as integral piping for a natural gas storage facility.

(14) ~~(13)~~ "Natural gas storage reservoir" means a pool or field from which gas or oil has previously been produced and which is suitable for or capable of being made suitable for the injection, storage, and recovery of gas, as identified in a

permit application submitted to the department under s. 377.2407.

(15) ~~(14)~~ "New field well" means an oil or gas well completed after July 1, 1997, in a new field as designated by the Department of Environmental Protection.

(16) ~~(15)~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(17) ~~(16)~~ "Oil and gas" has the same meaning as the term "oil or gas."

(18) ~~(17)~~ "Oil and gas administrator" means the State Geologist.

(19) ~~(18)~~ "Operator" means the entity who:

(a) Has the right to drill and to produce a well; or

(b) As part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or stores gas in, or removes gas from, a natural gas storage reservoir.

(20) ~~(19)~~ "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production for the person or for the person and another, or others.

(21) ~~(20)~~ "Person" means a natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(22) ~~(21)~~ "Pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or

both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate pool as used herein.

(23) ~~(22)~~ "Producer" means the owner or operator of a well or wells capable of producing oil or gas, or both.

(24) ~~(23)~~ "Product" means a commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(25) ~~(24)~~ "Reasonable market demand" means the amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(26) ~~(25)~~ "Reservoir protective area" means the area extending up to and including 2,000 feet surrounding a natural gas storage reservoir.

(27) ~~(26)~~ "Shut-in bottom hole pressure" means the pressure at the bottom of a well when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.

(28) ~~(27)~~ "Shut-in well" means an oil or gas well that has been taken out of service for economic reasons or mechanical repairs.

(29) ~~(28)~~ "State" means the State of Florida.

(30)~~(29)~~ "Temporarily abandoned well" means a permitted well or wellbore that has been abandoned by plugging in a manner that allows reentry and redevelopment in accordance with oil or gas rules of the Department of Environmental Protection.

(31)~~(30)~~ "Tender" means a permit or certificate of clearance for the transportation or the delivery of oil, gas, or products, approved and issued or registered under the authority of the division.

(32)~~(31)~~ "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. The term "waste" includes:

(a) The inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that results, or tends to result, in reducing the quantity of oil or gas ultimately to be stored or recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes, or tends to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) The producing of oil or gas in a manner that causes unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(f) The underground waste, however caused and whether or

not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount that is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) The abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals, causing undue drainage between tracts of land.

(33)~~(32)~~ "Well site" means the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas, or to inject gas into and recover gas from a natural gas storage facility.

Section 3. Subsection (2) of section 377.22, Florida Statutes, is amended to read:

377.22 Rules and orders.—

(2) The department shall issue orders and adopt rules pursuant to ss. 120.536 and 120.54 to implement and enforce ~~the provisions of~~ this chapter. Such rules and orders shall ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, including high-pressure well stimulations, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.

The department shall revise such rules from time to time as necessary for the proper administration and enforcement of this chapter. Rules adopted and orders issued in accordance with this section are for, but not limited to, the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs.

(b) To prevent the alteration of the sheet flow of water in any area.

(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.

(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.

(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum, except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.

(f) To require a reasonable bond, or other form of security acceptable to the department, conditioned upon properly drilling, casing, producing, and operating each well and properly plugging ~~the performance of the duty to plug properly~~ each dry and abandoned well and upon the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar

contour and general condition in existence before ~~prior to~~ such operation.

(g) To require and carry out a reasonable program of monitoring and inspecting ~~or inspection of~~ all drilling operations, high-pressure well stimulations, producing wells, ~~or~~ injecting wells, and well sites, including regular inspections by division personnel. Inspections are required during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations.

(h) To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records. However, such information, or any part thereof, at the request of the operator, shall be exempt from ~~the provisions of~~ s. 119.07(1) and held confidential by the division for ~~a period of~~ 1 year after the completion of a well.

(i) To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs.

(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(l) To prevent "blowouts," "caving," and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(m) To prevent fires.

(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities.

(o) To regulate the "shooting," perforating, ~~and~~ chemical treatment, and high-pressure stimulations of wells.

(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(q) To regulate gas cycling operations.

(r) To regulate the storage and recovery of gas injected into natural gas storage facilities.

(s) If necessary for the prevention of waste, as herein defined, to determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state.

(t) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.

(u) To regulate the spacing of wells and to establish drilling units.

(v) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

(w) To require that geophysical operations requiring a

permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas.

(x) To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state.

(y) To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.

(z) To evaluate the history of prior adjudicated, uncontested, or settled violations committed by permit applicants or the applicants' affiliated entities of any substantive and material rule or law pertaining to the regulation of oil or gas.

Section 4. Subsections (1), (2), (4), and (5) of section 377.24, Florida Statutes, are amended, present subsections (6) through (9) of that section are redesignated as subsections (5) through (8), respectively, and a new subsection (9) and subsection (10) are added to that section, to read:

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—

(1) Before drilling a well in search of oil or gas, before performing a high-pressure well stimulation, or before storing gas in or recovering gas from a natural gas storage reservoir, the person who desires to drill for, store, or recover gas, ~~or~~ drill for oil or gas, or perform a high-pressure well stimulation shall notify the division upon such form as it may prescribe and shall pay a reasonable fee set by rule of the department not to exceed the actual cost of processing and inspecting for each well or reservoir. The drilling of any well,

the performance of any high-pressure well stimulation, and the storing and recovering of gas are prohibited until such notice is given, the fee is paid, and a ~~the~~ permit is granted. A permit may authorize a single activity or multiple activities.

(2) An application for the drilling of a well in search of oil or gas, for the performance of a high-pressure well stimulation, or for the storing of gas in and recovering of gas from a natural gas storage reservoir~~,~~ in this state must include the address of the residence of the applicant~~,~~ or applicants, which must be the address of each person involved in accordance with the records of the Division of Water Resource Management until such address is changed on the records of the division after written request.

(4) Application for permission to drill or abandon any well or perform a high-pressure well stimulation may be denied by the division for only just and lawful cause.

~~(5) No permit to drill a gas or oil well shall be granted within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly approved the application for such permit by resolution.~~

(9) The department may not approve a permit to authorize a high-pressure well stimulation until the department adopts rules for high-pressure well stimulations which are based upon the findings of the study required pursuant to s. 377.2436 and such rules take effect.

(10) The rules for high-pressure well stimulation shall be submitted to the President of the Senate and Speaker of the House of Representatives and such rules may not take effect until they are ratified by the Legislature.

Section 5. Subsections (5) and (6) are added to section 377.241, Florida Statutes, to read:

377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(5) For high-pressure well stimulations, whether the high-pressure well stimulation as proposed is designed to ensure that:

(a) The groundwater near the well location, including groundwater through which the well will be or has been drilled, is not contaminated as a result of the high-pressure well stimulation; and

(b) The high-pressure well stimulation is consistent with the public policy of this state as specified in s. 377.06.

(6) As a basis for permit denial or imposition of specific permit conditions, including increased bonding up to five times the applicable limits and increased monitoring, the history of prior adjudicated, uncontested, or settled violations committed by the applicant or an affiliated entity of the applicant of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state.

Section 6. Section 377.242, Florida Statutes, is amended to read:

377.242 Permits for drilling or exploring and extracting through well holes or by other means.—The department is vested with the power and authority:

(1)(a) To issue permits for the performance of a high-

pressure well stimulation or the drilling for, exploring for, or production of oil, gas, or other petroleum products that ~~which~~ are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.

1. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed on any submerged land within any bay or estuary.

2. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed within 1 mile seaward of the coastline of the state.

3. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream.

4. A ~~No~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless the department is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.

5. Without exception, after July 1, 1989, a ~~no~~ structure intended for the drilling for, or production of, oil, gas, or

other petroleum products may not be permitted or constructed south of 26°00′00″ north latitude off Florida's west coast and south of 27°00′00″ north latitude off Florida's east coast, within the boundaries of Florida's territorial seas as defined in 43 U.S.C. s. 1301. After July 31, 1990, a ~~no~~ structure intended for the drilling for, or production of, oil, gas, or other petroleum products may not be permitted or constructed north of 26°00′00″ north latitude off Florida's west coast to the western boundary of the state bordering Alabama as set forth in s. 1, Art. II of the State Constitution, or located north of 27°00′00″ north latitude off Florida's east coast to the northern boundary of the state bordering Georgia as set forth in s. 1, Art. II of the State Constitution, within the boundaries of Florida's territorial seas as defined in 43 U.S.C. s. 1301.

(b) Subparagraphs (a)1. and 4. do not apply to permitting or construction of structures intended for the drilling for, or production of, oil, gas, or other petroleum products pursuant to an oil, gas, or mineral lease of such lands by the state under which lease any valid drilling permits are in effect on the effective date of this act. In the event that such permits contain conditions or stipulations, such conditions and stipulations shall govern and supersede subparagraphs (a)1. and 4.

(c) The prohibitions of subparagraphs (a)1.-4. ~~in this subsection~~ do not include "infield gathering lines," provided no other placement is reasonably available and all other required permits have been obtained.

(2) To issue permits to explore for and extract minerals which are subject to extraction from the land by means other

than through a well hole.

(3) To issue permits to establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.

Each permit shall contain an agreement by the permitholder that the permitholder will not prevent inspection by division personnel at any time, including during installation and cementing of casing, during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations. The provisions of this section prohibiting permits for drilling or exploring for oil in coastal waters do not apply to any leases entered into before June 7, 1991.

Section 7. Subsection (1) of section 377.2425, Florida Statutes, is amended to read:

377.2425 Manner of providing security for geophysical exploration, drilling, and production.—

(1) Before ~~Prior to~~ granting a permit for conducting ~~to conduct~~ geophysical operations; drilling of exploratory, injection, or production wells; producing oil and gas from a wellhead; performing a high-pressure well stimulation; or transporting oil and gas through a field-gathering system, the department shall require the applicant or operator to provide surety that these operations will be conducted in a safe and environmentally compatible manner.

(a) The applicant for a drilling, production, high-pressure well stimulation, or injection well permit or a geophysical

permit may provide the following types of surety to the department for this purpose:

1. A deposit of cash or other securities made payable to the Minerals Trust Fund. Such cash or securities so deposited shall be held at interest by the Chief Financial Officer to satisfy safety and environmental performance provisions of this chapter. The interest shall be credited to the Minerals Trust Fund. Such cash or other securities shall be released by the Chief Financial Officer upon request of the applicant and certification by the department that all safety and environmental performance provisions established by the department for permitted activities have been fulfilled.

2. A bond of a surety company authorized to do business in the state in an amount as provided by rule.

3. A surety in the form of an irrevocable letter of credit in an amount as provided by rule guaranteed by an acceptable financial institution.

(b) An applicant for a drilling, production, high-pressure well stimulation, or injection well permit, or a permittee who intends to continue participating in long-term production activities of such wells, has the option to provide surety to the department by paying an annual fee to the Minerals Trust Fund. For an applicant or permittee choosing this option the following shall apply:

1. For the first year, or part of a year, of a drilling, production, or injection well permit, or change of operator, the fee is $4,000 per permitted well.

2. For each subsequent year, or part of a year, the fee is $1,500 per permitted well.

3. The maximum fee that an applicant or permittee may be required to pay into the trust fund is $30,000 per calendar year, regardless of the number of permits applied for or in effect.

4. The fees set forth in subparagraphs 1., 2., and 3. shall be reviewed by the department on a biennial basis and adjusted for the cost of inflation. The department shall establish by rule a suitable index for implementing such fee revisions.

(c) An applicant for a drilling or operating permit for operations planned in coastal waters that by their nature warrant greater surety shall provide surety only in accordance with paragraph (a), or similar proof of financial responsibility other than as provided in paragraph (b). For all such applications, including applications pending at the effective date of this act and notwithstanding ~~the provisions of~~ paragraph (b), the Governor and Cabinet in their capacity as the Administration Commission, at the recommendation of the department ~~of Environmental Protection~~, shall set a reasonable amount of surety required under this subsection. The surety amount shall be based on the projected cleanup costs and natural resources damages resulting from a maximum oil spill and adverse hydrographic and atmospheric conditions that would tend to transport the oil into environmentally sensitive areas, as determined by the department ~~of Environmental Protection~~.

Section 8. Section 377.2436, Florida Statutes, is created to read:

377.2436 Study on high-pressure well stimulations.—

(1) The department shall conduct a study on high-pressure well stimulations. The study must:

(a) Evaluate the underlying geologic features present in the counties where oil wells have been permitted and analyze the potential impact that high-pressure well stimulation and wellbore construction may have on the underlying geologic features.

(b) Evaluate the potential hazards and risks that high-pressure well stimulation poses to surface water or groundwater resources. The study must assess the potential impacts of high-pressure well stimulation on drinking water resources and identify the main factors affecting the severity and frequency of impacts and must analyze the potential for the use or reuse of recycled water in well stimulation fluids while meeting appropriate water quality standards.

(c) Review and evaluate the potential for groundwater contamination from conducting high-pressure well stimulation under or near wells that have been previously plugged and abandoned and identify a setback radius from previously plugged and abandoned wells that could be impacted by high-pressure well stimulation.

(d) Review and evaluate the ultimate disposition of high-pressure well stimulation fluids after use in high-pressure well stimulation processes.

(2) The department shall continue conventional oil and gas business operations during the performance of the study. There may not be a moratorium on the evaluation and issuance of permits for conventional drilling, exploration, conventional completions, or conventional workovers during the performance of the study.

(3) The study is subject to independent scientific peer

review.

(4) The department shall submit the findings of the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2017, and shall prominently post the findings on its website.

(5) The department may not adopt rules for high-pressure well stimulation until the findings of the study have been submitted to the Legislature. However, by March 1, 2018, the department must adopt rules to implement the findings of the study, if such rules are warranted to protect public health, safety, and the environment.

Section 9. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) A ~~Any~~ person who violates any provision of this chapter ~~law~~ or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and

property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty ~~in an amount~~ of not more than $25,000 ~~$10,000~~ for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. This paragraph does not ~~Nothing herein shall~~ give the department the right to bring an action on behalf of a ~~any~~ private person.

Section 10. Section 377.45, Florida Statutes, is created to read:

377.45 High-pressure well stimulation chemical disclosure registry.—

(1)(a) The department shall designate the national chemical disclosure registry, known as FracFocus, developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. The department shall provide a link to FracFocus through its website.

(b) In addition to providing the following information to the department as part of the permitting process, a service provider, vendor, or well owner or operator shall report, as established by department rule, to the department, at a minimum, the following information:

1. The name of the service provider, vendor, or owner or operator.

2. The date of completion of the high-pressure well stimulation.

3. The county in which the well is located.

4. The API Well Number.

5. The well name and number.

6. The longitude and latitude of the wellhead.

7. The total vertical depth of the well.

8. The total volume of water used in the high-pressure well stimulation.

9. Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2) and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed.

10. The trade or common name and the CAS Registry Number for each chemical ingredient.

(c) The department shall report to FracFocus all information received under paragraph (b), excluding any information subject to chapter 688.

(d) If FracFocus cannot accept and make publicly available any information specified in this section, the department shall post the information on its website, excluding any information subject to chapter 688.

(2) A service provider, vendor, or well owner or operator shall:

(a) Report the information required under subsection (1) to the department within 60 days after the initiation of the high-pressure well stimulation for each well on which such high-pressure well stimulation is performed.

(b) Notify the department if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

(3) This section does not apply to an ingredient that:

(a) Is not intentionally added to the high-pressure well stimulation; or

(b) Occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

(4) The department shall adopt rules to administer this section.

Section 11. Section 377.07, Florida Statutes, is amended to read:

377.07 Division of Water Resource Management; powers, duties, and authority.—The Division of Water Resource Management of the Department of Environmental Protection is ~~hereby~~ vested with power, authority, and duty to administer, carry out, and enforce ~~the provisions of~~ this part ~~law as directed in s. 370.02(3)~~.

Section 12. Section 377.10, Florida Statutes, is amended to read:

377.10 Certain persons not to be employed by division.—A ~~No~~ person in the employ of, or holding any official connection or position with any person, firm, partnership, corporation, or association of any kind, engaged in the business of buying or selling mineral leases, drilling wells in the search of oil or gas, producing, transporting, refining, or distributing oil or gas may not ~~shall~~ hold any position under, or be employed by, the Division of Water Resource Management in the prosecution of its duties under this part ~~law~~.

Section 13. Subsection (1) of section 377.243, Florida Statutes, is amended to read:

377.243 Conditions for granting permits for extraction

through well holes.—

(1) Before applying ~~Prior to the application~~ to the Division of Water Resource Management for the permit to drill for oil, gas, and related products referred to in s. 377.242(1), the applicant must own a valid deed, or other muniment of title, or lease granting the ~~said~~ applicant the privilege to explore for oil, gas, or related mineral products to be extracted only through the well hole on the land or lands included in the application. However, unallocated interests may be unitized according to s. 377.27.

Section 14. Subsection (1) of section 377.244, Florida Statutes, is amended to read:

377.244 Conditions for granting permits for surface exploratory and extraction operations.—

(1) Exploration for and extraction of minerals under ~~and by virtue of~~ the authority of a grant of oil, gas, or mineral rights, or which, subsequent to such grant, may ~~be interpreted to~~ include the right to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole, that is by means of surface exploratory and extraction operations such as sifting of the sands, dragline, open pit mining, or other type of surface operation, which would include movement of sands, dirt, rock, or minerals, shall be exercised only pursuant to a permit issued by the Division of Water Resource Management upon the applicant's compliance ~~applicant complying~~ with the following conditions:

(a) The applicant must own a valid deed, or other muniment of title, or lease granting the applicant the right to explore for and extract oil, gas, and other minerals from the ~~said~~

lands.

(b) The applicant shall post a good and sufficient surety bond with the division in such amount as the division determines ~~may determine~~ is adequate to afford full and complete protection for the owner of the surface rights of the lands described in the application, conditioned upon the full and complete restoration, by the applicant, of the area over which the exploratory and extraction operations are conducted to the same condition and contour in existence before ~~prior to~~ such operations.

Section 15. For the 2016-2017 fiscal year, the sum of $1 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection to conduct a high-pressure well stimulation study pursuant to s. 377.2436, Florida Statutes.

Section 16. This act shall take effect July 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 Appropriations

BILL:	SB 356
INTRODUCER:	Senator Hutson
SUBJECT:	Mental or Physical Disabilities
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.	Clodfelter	Sadberry	ACJ	**Recommend: Favorable**
3.	Clodfelter	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 356 removes prejudice based on mental or physical disability as a factor for reclassifying a criminal offense or having a civil cause of action under section 775.085, Florida Statutes, Florida's hate crimes statute. Section 775.085, Florida Statutes, reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on any of ten specified characteristics of the victim, including mental or physical disability. It also provides that a person or organization who is coerced, intimidated, or threatened in violation of the statute has a civil cause of action. The bill creates a new section of law, section 775.0851, Florida Statutes, which may be cited as "Carl's Law," to establish a separate hate crime statute specifically for crimes evidencing prejudice based on mental or physical disability. This new section's language is substantively identical to the language currently in section 775.085, Florida Statutes, with respect to evidencing prejudice based on mental or physical disability.

The Criminal Justice Impact Conference estimates that SB 356 will not have a prison bed impact.

The effective date of the bill is October 1, 2016.

II. Present Situation:

Section 775.085, F.S., Florida's hate crimes statute, reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, *mental or physical disability*,[1] or advanced age of the victim.[2] It is an essential element of proof for the record to reflect that the defendant perceived, knew, or had reasonable grounds to know or

[1] "Mental or physical disability" means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living. Section 775.085(1)(b)1., F.S.

[2] Section 775.08(1), F.S.

perceive that the victim was within one of the delineated classes.[3] This is commonly referred to as the "hate crime" statute. Offenses are reclassified as follows:

- A second degree misdemeanor[4] is reclassified to a first degree misdemeanor.[5]
- A first degree misdemeanor is reclassified to a third degree felony.[6]
- A third degree felony is reclassified to a second degree felony.[7]
- A second degree felony is reclassified to a first degree felony.[8]
- A first degree felony is reclassified to a life felony.[9]

Reclassification of the degree of an offense increases the minimum and maximum penalties that a judge may impose for an offense.

Section 775.085, F.S., also provides that a person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney's fees and costs.[10]

It is an essential element of proof in either a criminal or civil action under the statute for the record to reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within one of the delineated classes.[11]

III. Effect of Proposed Changes:

The bill removes prejudice based on mental or physical disability as a factor for reclassifying an offense or having a civil cause of action under s. 775.085, F.S., Florida's hate crimes statute. The bill creates a new section of law, s. 775.0851, F.S., which may be cited as "Carl's Law," to establish a separate hate crime statute specifically for crimes evidencing prejudice based on mental or physical disability. This new section's language is substantively identical to the language currently in s. 775.085, F.S, with respect to evidencing prejudice based on mental or physical disability. This highlights the offense by placing it in a separate statutory section, but does not change the effect of the law.

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[3] Section. 775.085(3), F.S.

[4] A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to $500. Sections 775.082 and 775.083, F.S.

[5] A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.

[6] A third degree felony is punishable by up to five years in state prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding any third degree felony violation under ch. 810, F.S.) and if total sentence points are 22 points or fewer, the court must sentence the defendant to a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

[7] A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.

[8] A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S

[9] A life felony is generally punishable by life imprisonment or a term of years not exceeding life imprisonment and a fine of up to $15,000. Sections 775.082 and 775.083, F.S.

[10] Section 775.085(2), F.S.

[11] Section 775.085(3), F.S.

The effective date of the bill is October 1, 2016.

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 official estimate of the prison bed impact, if any, of legislation, estimates that SB 356 will not have a prison bed impact. There will also be no fiscal impact in other areas of the criminal or civil justice systems.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Florida Attorney General's Office, in 2014 (the latest year for which data is reported), there were two reported hate crimes in Florida motivated by the victim's mental disability (2.7% of reported hate crimes). No hate crimes were reported under the physical disability category.[12]

[12] *Hate Crimes in Florida (January 1, 2014 – December 31, 2014)*, Florida Attorney General's Office, http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A5QNXL/$file/2014HateCrimesinFloridaReport.pdf (last visited on February 11, 2016).

In August 2015, a thirty-six-year-old autistic St. Augustine resident named Carl Starke was followed home and murdered by several individuals who were reportedly looking for cars to steal.[13] During the investigation that resulted in the days following Carl Starke's murder, the St. Johns County Sheriff, David Shoar, stated that Starke was victimized because he was seen as a "soft target" by these individuals.[14]

VIII. Statutes Affected:

This bill substantially amends section 775.085 of the Florida Statutes.

This bill creates section 775.0851 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.

[13] Jenna Carpenter, "Shoar: Suspects in Vista Cove Killing Targeted Autistic Man," *The St. Augustine Record* (August 21, 2015), http://staugustine.com/news/local-news/2015-08-21/two-suspects-identified-tuesday-homicide#.Vk9nSk3ltHh (last visited on February 11, 2016).
[14] *Id.*

By Senator Hutson

6-00364-16 2016356__

A bill to be entitled

An act relating to mental or physical disabilities; providing a short title; amending s. 775.085, F.S.; deleting enhanced penalties for crimes evidencing prejudice based on mental or physical disability; deleting the definition of the term "mental or physical disability"; creating s. 775.0851, F.S.; defining the term "mental or physical disability"; creating enhanced penalties for crimes evidencing prejudice based on mental or physical disability; creating a cause of action for a person or organization that is threatened with certain violations; providing an essential element for such cause of action; providing an effective date.

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

Section 1. This act may be cited as "Carl's Law."

Section 2. Subsection (1) of section 775.085, Florida Statutes, is amended to read:

775.085 Evidencing prejudice while committing offense; reclassification.—

(1)(a) The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, ~~mental or physical disability,~~ or advanced age of the victim:

1. A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

6-00364-16 2016356__

2. A misdemeanor of the first degree is reclassified to a felony of the third degree.

3. A felony of the third degree is reclassified to a felony of the second degree.

4. A felony of the second degree is reclassified to a felony of the first degree.

5. A felony of the first degree is reclassified to a life felony.

(b) As used in paragraph (a), the term:

~~1. "Mental or physical disability" means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living.~~

1.~~2.~~ "Advanced age" means that the victim is older than 65 years of age.

2.~~3.~~ "Homeless status" means that the victim:

a. Lacks a fixed, regular, and adequate nighttime residence; or

b. Has a primary nighttime residence that is:

(I) A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or

(II) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Section 3. Section 775.0851, Florida Statutes, is created to read:

775.0851 Evidencing prejudice while committing offense against persons with mental or physical disabilities; reclassification.—

(1) As used in this section, the term "mental or physical disability" means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living.

(2) The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of the felony or misdemeanor evidences prejudice based on the mental or physical disability of the victim:

(a) A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

(b) A misdemeanor of the first degree is reclassified to a felony of the third degree.

(c) A felony of the third degree is reclassified to a felony of the second degree.

(d) A felony of the second degree is reclassified to a felony of the first degree.

(e) A felony of the first degree is reclassified to a life felony.

(3) A person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such

civil action, the plaintiff may recover reasonable attorney fees and costs.

(4) It is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim had a mental or physical disability.

Section 4. This act shall take effect October 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 Appropriations

BILL:	CS/SB 400
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Hays
SUBJECT:	Organizational Structure of the Department of Environmental Protection
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Favorable**
3.	Howard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 400 revises the organizational structure of the Department of Environmental Protection (department) and authorizes the secretary of the department to establish divisions and offices to accomplish the agency's mission and goals. These divisions include, but are not limited to, water resources management, regulatory programs, and lands and recreation. The bill provides greater flexibility in the coordination of existing programs in order to increase responsiveness to public needs.

There is no fiscal impact on the department.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Chapter 20, F.S., sets forth the requirements for the organizational structure of the executive branch to maximize the efficiency and effectiveness of agencies. Specifically, s. 20.02, F.S., requires departments to be organized along functional or program lines and stipulates the structural reorganization of departments to be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Section 20.04(3), F.S., requires each department[1] to adhere to the following organizational structure:

- The principal unit of the department is the "division." Each division is headed by a "director."
- The principal unit of the division is the "bureau." Each bureau is headed by a "chief."
- The principal unit of the bureau is the "section." Each section is headed by an "administrator."
- If further subdivision is necessary, sections may be divided into "subsections," which are headed by "supervisors."

The head of a department is prohibited from reallocating duties and functions specifically assigned by law to a specific unit of the department, unless specifically authorized by law. However, the head of the department is authorized to allocate or reallocate those duties or functions that are assigned generally.[2]

Additional divisions, bureaus, sections, and subsections of a department may be recommended by the head of the department to promote efficient and effective operation. New bureaus, sections, and subsections of a department may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.[3]

Some departments, such as the Department of State and the Department of Management Services, have organizational structures that statutorily establish each division or program within the department.[4] Whereas, other departments like the Department of Transportation and the Department of Corrections have organizational structures that statutorily authorize the secretaries of such departments to appoint positions at the level of deputy assistant secretary, director, or other positions as the secretary deems necessary to accomplish the mission and goals of the department.[5]

Section 20.255, F.S., provides the organizational structure for the Department of Environmental Protection and statutorily establishes each division and special office within the department. Additionally, s. 20.255, F.S., requires there to be six administrative districts involved in regulatory matters of waste management, water resource management, wetlands, and air resources.

III. Effect of Proposed Changes:

This bill revises the requirements for the organizational structure of the Department of Environmental Protection (department) to promote efficiency and effectiveness and to provide greater flexibility in the coordination of existing programs in response to public needs.

[1] Section 20.04(3), F.S. provides an exception for the Department of Financial Services, the Department of Children and Families, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation.
[2] Section 20.04(7)(a), F.S.
[3] Section 20.04(7)(b), F.S.
[4] See s. 20.10, F.S., creating the Department of State and s. 20.22, F.S., creating the Department of Management Services.
[5] See s. 20.23, F.S., creating the Department of Transportation and s. 20.315, F.S., creating the Department of Corrections.

The bill requires the secretary of the department to appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The bill provides that the general counsel is responsible for all legal matters of the department.

Rather than statutorily establishing each division, the bill authorizes the secretary to establish divisions as he or she deems necessary to accomplish the mission and goals of the department, which include, but are not limited to, the following program areas:

- Water Resources Management;
- Regulatory Programs; and
- Lands and Recreation.

As required under s. 20.04, F.S., the bill specifies that divisions shall be headed by directors. Each director is to be appointed by and shall serve at the pleasure of the secretary. The bill does not revise the statutorily established Division of State Lands within the department.

The bill authorizes offices to be established as deemed necessary to promote the effective and efficient operation of the department. Under the bill, the secretary is authorized to combine, separate, or delete offices as necessary in consultation with the Executive Office of the Governor.

The bill removes the authorization for a division to have one assistant or two deputy division directors and the requirement that there be six administrative districts limited to the areas of waste management, water resource management, wetlands, and air resources.

The bill takes effect July 1, 2016.

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:

There are numerous references in statute to specific divisions and offices within the department. If the department revises the names of divisions or offices or transfers authority between divisions or offices, then the statutory references to such division or office will need to be amended.

VIII. Statutes Affected:

This bill substantially amends section 20.255 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 Environmental Preservation and Conservation on November 18, 2015:
The CS requires the Secretary of the Department of Environmental Protection to appoint a general counsel and provides that the general counsel is responsible for all legal matters of the department.

B. Amendments:

None.

517418

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (2) and (3) of section 20.255, Florida Statutes, are amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(2)(a) There shall be three deputy secretaries who are to be appointed by and shall serve at the pleasure of the

secretary. The secretary may assign any deputy secretary the responsibility to supervise, coordinate, and formulate policy for any division, office, or district. ~~The following special offices are established and headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary:~~

~~1. Office of Chief of Staff;~~

~~2. Office of General Counsel;~~

~~3. Office of Inspector General;~~

~~4. Office of External Affairs;~~

~~5. Office of Legislative Affairs;~~

~~6. Office of Intergovernmental Programs; and~~

~~7. Office of Greenways and Trails.~~

~~8. Office of Emergency Response.~~

(b) The Office of the Secretary is established. The secretary may establish offices within divisions or within the Office of the Secretary to promote the efficient and effective operation of the department.

(c) The secretary shall appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The general counsel is responsible for all legal matters of the department.

(d) ~~(b)~~ There shall be six administrative districts involved in regulatory matters of waste management, water resource management, wetlands, and air resources, which shall be headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary. Divisions of the department may have one assistant or two deputy division directors, as required to facilitate effective operation.

517418

The directors ~~managers~~ of all divisions, managers of all ~~and~~ offices, ~~specifically named in this section~~ and the managers ~~directors~~ of the six administrative districts are exempt from part II of chapter 110 and are included in the Senior Management Service in accordance with s. 110.205(2)(j).

(3) The following divisions of the Department of Environmental Protection are established:

(a) Division of Administrative Services.

(b) Division of Air Resource Management.

(c) Division of Water Resource Management.

(d) Division of Environmental Assessment and Restoration.

(e) Division of Waste Management.

(f) Division of Recreation and Parks.

(g) Division of State Lands, the director of which is to be appointed by the secretary of the department, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(h) Division of Water Restoration Assistance.

In order to ensure statewide and intradepartmental consistency, the department's divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department's rules and programs.

Section 2. This act shall take effect July 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:

517418

A bill to be entitled

An act relating to the organizational structure of the Department of Environmental Protection; amending s. 20.255, F.S.; deleting a provision requiring certain offices within the department; establishing the Office of the Secretary; authorizing the secretary to establish offices within divisions or the Office of the Secretary as necessary to promote the efficient and effective operation of the department; requiring the appointment of a general counsel; providing an exemption for certain managers and directors from part II of ch. 110, F.S.; establishing the Division of Water Restoration Assistance within the department; providing an effective date.

By the Committee on Environmental Preservation and Conservation; and Senator Hays

592-01416A-16 2016400c1

A bill to be entitled

An act relating to the organizational structure of the Department of Environmental Protection; amending s. 20.255, F.S.; requiring the secretary of the Department of Environmental Protection to appoint a general counsel; authorizing the secretary to establish divisions as necessary to accomplish the mission and goals of the department; authorizing offices to be established as necessary to promote the efficient and effective operation of the department; deleting the required establishment of certain offices and divisions; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 20.255, Florida Statutes, are amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(2)(a) The secretary shall appoint ~~There shall be~~ three deputy secretaries who ~~are to be appointed by and shall~~ serve at the pleasure of the secretary. The secretary may assign any deputy secretary the responsibility to supervise, coordinate, and formulate policy for any division, office, or district.

(b) The secretary shall appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The general counsel is responsible for all legal matters of the department.

(c) The secretary may establish divisions as he or she

592-01416A-16 2016400c1

deems necessary to accomplish the mission and goals of the department, including, but not limited to, the following areas of program responsibility: water resources management, regulatory programs, and lands and recreation. The divisions shall be headed by directors, each of whom is to be appointed by and serve at the pleasure of the secretary. The Division of State Lands is established within the department, the director of which is to be appointed by the secretary, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(d) Offices may be established as deemed necessary to promote the efficient and effective operation of the department. The secretary may combine, separate, or delete offices as necessary in consultation with the Executive Office of the Governor. The ~~following special~~ offices shall be ~~are established and~~ headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary~~:~~

~~1. Office of Chief of Staff;~~

~~2. Office of General Counsel;~~

~~3. Office of Inspector General;~~

~~4. Office of External Affairs;~~

~~5. Office of Legislative Affairs;~~

~~6. Office of Intergovernmental Programs; and~~

~~7. Office of Greenways and Trails.~~

~~8. Office of Emergency Response~~.

(e)~~(b)~~ There shall be ~~six~~ administrative districts involved in regulatory matters, such as ~~of~~ waste management, water resource management, wetlands, and air resources. The districts~~,~~ ~~which~~ shall be headed by managers, each of whom is to be

appointed by and serve at the pleasure of the secretary. ~~Divisions of the department may have one assistant or two deputy division directors, as required to facilitate effective operation.~~

The managers of all divisions, ~~and~~ offices, and districts ~~specifically named in this section and the directors of the six administrative districts~~ are exempt from part II of chapter 110 and are included in the Senior Management Service in accordance with s. 110.205(2)(j).

(3) ~~The following divisions of the Department of Environmental Protection are established:~~

~~(a) Division of Administrative Services.~~

~~(b) Division of Air Resource Management.~~

~~(c) Division of Water Resource Management.~~

~~(d) Division of Environmental Assessment and Restoration.~~

~~(e) Division of Waste Management.~~

~~(f) Division of Recreation and Parks.~~

~~(g) Division of State Lands, the director of which is to be appointed by the secretary of the department, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.~~ In order to ensure statewide and intradepartmental consistency, the department's divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department's rules and programs.

Section 2. This act shall take effect July 1, 2016.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 432
INTRODUCER:	Education Pre-K - 12 Committee and Senator Hutson
SUBJECT:	Teacher Certification
DATE:	February 22, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 432 creates an expedited pathway for an individual holding a Florida temporary educator certificate to earn a Florida professional educator certificate for grades 6-12.

Specifically, the bill requires the applicant to:

- Meet all general certification requirements, with the exception of certain professional preparation coursework requirements;
- Hold a master's or higher degree in the area of science, technology, engineering, or mathematics;
- Teach a high school course in the subject of the advanced degree;
- Be rated as highly effective as determined by the teacher's performance evaluation system, based in part on student performance as measured by a statewide standardized assessment or an Advanced International Certificate of Education, or International Baccalaureate examination; and
- Achieve a passing score on the Florida professional competency examination required by the state board rules.

The bill has no impact on state funds.

The bill takes effect on July 1, 2016.

II. Present Situation:

Instructional Personnel Certification

In order for a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida Department of Education.[1]

Certification requirements are established to assure that educational personnel in public schools possess appropriate skills in reading, writing, and mathematics, and adequate pedagogical knowledge, including the use of technology to enhance student learning, and relevant subject matter competence to demonstrate an acceptable level of professional performance.[2]

Types of Educator Certificates

The Department of Education (DOE) identifies appropriate educator certification for the instruction of specified courses in an annual publication of a directory of course code numbers[3] for all programs and courses funded through the Florida Education Finance Program.[4]

The DOE issues three types of educator certificates:[5]

- A professional certificate is the highest type of full-time certificate issued. The professional certificate is a 5-year renewable certificate.[6]
- A temporary certificate is a 3-year nonrenewable certificate issued to an applicant who does not qualify for a professional certificate.[7]
- An Athletic Coaching certificate covers a full-time or part-time individual who is employed as an athletic coach in any public school in any district of the state.[8]

Eligibility Criteria for Educator Certification

To be eligible to seek a Florida educator's certificate, an individual must submit an application and meet specified requirements:[9]

- Be at least 18 years of age;
- File an affidavit to uphold the principles incorporated in the Constitution of the United States and the Constitution of the State of Florida;
- Document receipt of a bachelor's or higher degree from an accredited institution of higher learning, or a nonaccredited institution of higher learning that the DOE has identified as having a quality program resulting in a bachelor's degree, or higher;
- Submit to a background screening;

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[1] Sections 1012.55(1) and 1002.33(12)(f), F.S.
[2] Section 1012.54, F.S.
[3] Department of Education, *2015-2016 Course Directory*, http://www.fldoe.org/policy/articulation/ccd/2015-2016-course-directory.stml (last visited January 21, 2016).
[4] Section 1012.55(1)(c), F.S.
[5] Section 1012.55, F.S.
[6] Section 1012.56(1), (2), (3), (5), (6), and (7), F.S.
[7] Section 1012.56(7)(b), F.S.; Rule 6A-4.004(1), F.A.C.
[8] Section 1012.55(2)(a), F.S.
[9] Section 1012.56(2), F.S.; Rule 6A-4.002, F.A.C.

- Be of good moral character;
- Be competent and capable of performing the duties, functions, and responsibilities of an educator; and
- Demonstrate mastery of general knowledge, subject area knowledge, and professional preparation and education competence.

General Knowledge

Mastery of general knowledge may be demonstrated through several methods, including achieving a passing score on the General Knowledge Test[10] or achieving passing scores established in state board rule on national or international examinations that test comparable content and relevant standards in verbal, analytical writing, and quantitative reasoning skills portions of the Graduate Record Examination.[11]

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge within one calendar year after employment in order to remain employed in a position that requires a certificate.[12]

If the educator is employed under contract, the calendar year deadline for demonstrating mastery of general knowledge may be extended through the end of the school year.[13]

Subject Area Knowledge

Mastery of subject area knowledge may be demonstrated by earning a baccalaureate or graduate degree and passing the Florida-developed subject area examination specified in state board rule[14] or, if a Florida subject area examination has not been developed, achieving a passing score on a standardized examination specified in state board rule.[15]

An applicant may also demonstrate mastery of subject area knowledge by providing documentation of a valid professional standard teaching certificate issued for a subject area by another U.S. state or territory, by National Board for Professional Teaching Standards, or by American Board for Certification of Teacher Excellence, if the certificate is comparable to the Florida certificate issued for the same subject area.[16]

Professional Preparation and Education Competence

Mastery of professional preparation and education competence is typically demonstrated by successfully completing an approved teacher preparation program at a postsecondary educational institution in Florida, or a teacher preparation program from an out-of-state accredited or

[10] Section 1012.56(3)(a), F.S. The General Knowledge Test is part of the Florida Teacher Certification Examinations and is administered as four subtests: Reading, English Language Skills, Essay, and Mathematics. Rule 6A-4.0021(7), F.A.C.
[11] Section 1012.56(3)(e), F.S.; Rules 6A-4.002(4)(e) and 6A-4.0021(12)(a), F.A.C.
[12] Section 1012.56(7), F.S.
[13] *Id*.
[14] Section 1012.56(5)(a), F.S. The Florida Teacher Certification Examinations include 44 subject area tests. Florida Department of Education, *Florida Teacher Certification Examinations*, http://www.fl.nesinc.com/FL_TIGS.asp (last visited January 21, 2016).
[15] Section 1012.56(5), F.S.
[16] Section 1012.56(5)(e) and (f), F.S.; Rule 6A-4.002(1)(i)-(j), F.A.C.

department-approved institution, and achieving a passing score on the Professional Education Test required by state board rule.[17]

For individuals who have earned a baccalaureate or higher degree in a subject other than education, competence is demonstrated in part by completing 15 semester hours in professional preparation courses specified in state board rule[18] and achieving a passing score on the Professional Education Test.[19]

Exception to Educator Certification

Currently, local school district boards can issue an adjunct teaching certificate to any applicant who meets specific requirements[20] and has expertise in the assigned subject area.[21] The adjunct teaching certificate is only valid through the term of the annual contract between the educator and school district.[22]

State Board of Education rules authorize district school boards to employ selected noncertificated personnel to provide instructional services in the individuals' fields of specialty or to assist instructional staff members as education paraprofessionals.[23]

STEM Education

STEM education is the intentional integration of science, technology, engineering, and mathematics, and their associated practices to create a student-centered learning environment in which students investigate and engineer solutions to problems, and construct evidence-based explanations of real-world phenomena with a focus on a student's social, emotional, physical, and academic needs through shared contributions of schools, families, and community partners.[24]

III. Effect of Proposed Changes:

This bill creates an expedited pathway for an individual holding a Florida temporary educator certificate to earn a Florida professional educator certificate for grades 6-12.

Specifically, the bill requires the applicant to:

- Meet all general certification requirements, with the exception of certain professional preparation coursework requirements;

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[17] Section 1012.56(6)(a) and (b), F.S.; *see* s. 1004.04, F.S.; Rule 6A-4.003(1) and (4), F.A.C. The Professional Education Test is part of the Florida Teacher Certification Examinations. Rule 6A-4.0021(8), F.A.C.
[18] Section 1012.56(6)(f), F.S.; Rule 6A-4.006, F.A.C. The required 15 semester hours of course work in professional education areas include: classroom management, child and adolescent development and learning, educational assessment practices, effective instructional techniques, strategies, and materials to meet the needs of diverse learners, applications of research-based practices in reading, and strategies for teaching students of limited English proficiency.
[19] Section 1012.56(6)(f), F.S.
[20] Section 1012.56(2)(a)-(f) and (10), F.S.
[21] Section 1012.57(1), F.S.
[22] Section 1012.57(4), F.S.
[23] Section 1012.55(1)(c), F.S.; Rule 6A-1.0502, F.A.C
[24] Department of Education, *STEM Programs*, http://www.fldoe.org/academics/standards/subject-areas/math-science/stem/defining-stem.stml (last visited January 15, 2016).

- Hold a master's or higher degree in the area of science, technology, engineering, or mathematics (STEM);
- Teach a high school course in the subject of the advanced degree;
- Be rated as highly effective as determined by the teacher's performance evaluation system, based in part on student performance as measured by a statewide standardized assessment or an Advanced International Certificate of Education, or International Baccalaureate examination; and
- Achieve a passing score on the Florida professional competency examination required by the state board rules.

In effect, the bill creates an efficient approach for an individual with expertise in a STEM field to earn a professional educator certificate by eliminating the additional coursework requirements that would typically be completed while teaching under a Florida state-issued temporary certificate.

The bill permits an individual to bypass the 15 semester hours of professional preparation requirements, therefore, omitting coursework in topics such as classroom management with a focus on safe learning environments, educational assessment practices, and instructional strategies for teaching students of limited English proficiency. The bill presumes the educator, through attainment of a highly effective rating and a passing score on the Florida professional competency examination, has attained the knowledge and skills covered in the content areas of the professional preparation coursework.

The bill takes effect on July 1, 2016.

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:

Teachers who meet the qualifications specified in CS/SB 432 will save money as a result of not being required to enroll in the professional preparation courses. Currently, the average cost of tuition and fees at an Educator Preparation Institute (EPI), which provides professional preparation instruction for college graduates who were not education majors, is $106.74 per credit hour.[25]

C. Government Sector Impact:

The bill has no impact on state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1012.56 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 Education Pre-K – 12 on January 20, 2016:
The committee substitute modifies the bill as follows:

- Requires a bill title change from STEM Teachers Pilot Program to Teacher Certification which provides alternative requirements for an applicant to earn a professional educator certificate;
- Removes the STEM Teachers Pilot Program and reporting requirements; and
- Creates an expedited pathway for temporary certified teachers who meet certain requirements in the area of science, technology, engineering, or mathematics to receive a professional certificate for grades 6-12.

B. Amendments:

None.

[25] Florida Department of Education, Division of Florida Colleges, *Student Fees for Fall 2015-201, Credit Programs: A&P, PSV, Developmental Education, and EPI Programs*

By the Committee on Education Pre-K - 12; and Senator Hutson

581-02368-16 2016432c1

A bill to be entitled

An act relating to teacher certification; amending s. 1012.56, F.S.; providing alternative requirements for earning a professional educator certificate that covers certain grades; providing an effective date.

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

Section 1. Paragraph (a) of subsection (7) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(7) TYPES AND TERMS OF CERTIFICATION.—

(a) The Department of Education shall issue a professional certificate for a period not to exceed 5 years to any applicant who meets all the requirements outlined in subsection (2) or, for a professional certificate covering grades 6 through 12, any applicant who:

1. Meets the requirements of paragraphs (2)(a)-(h).

2. Holds a master's or higher degree in the area of science, technology, engineering, or mathematics.

3. Teaches a high school course in the subject of the advanced degree.

4. Is rated highly effective as determined by the teacher's performance evaluation under s. 1012.34, based in part on student performance as measured by a statewide, standardized assessment or an Advanced Placement, Advanced International Certificate of Education, or International Baccalaureate examination.

5. Achieves a passing score on the Florida professional education competency examination required by state board rule.

Each temporary certificate is valid for 3 school fiscal years

581-02368-16 2016432c1

and is nonrenewable. However, the requirement in paragraph (2)(g) must be met within 1 calendar year of the date of employment under the temporary certificate. Individuals who are employed under contract at the end of the 1 calendar year time period may continue to be employed through the end of the school year in which they have been contracted. A school district shall not employ, or continue the employment of, an individual in a position for which a temporary certificate is required beyond this time period if the individual has not met the requirement of paragraph (2)(g). The State Board of Education shall adopt rules to allow the department to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the requirement in paragraph (2)(g), were not completed due to the serious illness or injury of the applicant or other extraordinary extenuating circumstances. The department shall reissue the temporary certificate for 2 additional years upon approval by the Commissioner of Education. A written request for reissuance of the certificate shall be submitted by the district school superintendent, the governing authority of a university lab school, the governing authority of a state-supported school, or the governing authority of a private school.

Section 2. This act shall take effect July 1, 2016.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 434 (899122)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senators Garcia and Gaetz
SUBJECT:	Principal Autonomy Pilot Program Initiative
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 434 establishes the Principal Autonomy Pilot Program Initiative (PAPPI) within the Department of Education (DOE) to provide a highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management. Schools selected for participation in PAPPI are exempt from the K-20 Education Code and State Board of Education (SBE) rules, with exceptions. The bill requires specified personnel from each participating school and district to enroll in and complete a nationally recognized school turnaround program upon acceptance into the pilot program.

Funding for the pilot program is contingent upon an appropriation in the General Appropriations Act. The Legislature may provide an appropriation to the DOE for the costs of the pilot program, including administrative costs, enrollment costs for the school turnaround program, and an additional scholarship for each participating principal for use at his or her school.

The bill takes effective on July 1, 2016.

II. Present Situation:

Principal Authority and Responsibilities

A public school principal is responsible for: [1]

- Fully supporting the authority of classroom teachers and school bus drivers regarding student discipline and conduct.
- Providing instructional leadership in the development, revision, and implementation of a school improvement plan.
- Accurate and timely compliance with statutory reporting requirements.
- The management and care of instructional materials.
- Facilitating parental involvement in their child's education and providing information to parents regarding their child's educational progress and available educational choices pursuant to s. 1002.23, F.S.[2]

When filling instructional positions[3] at the school level, the district school superintendent must consider nominations received from school principals of the respective schools in the school district.[4] The superintendent then must make recommendations to the district school board regarding each position to be filled and the persons to fill such positions.[5] Before transferring a classroom teacher from one school to another, the superintendent must consult with the principal of the receiving school and allow the principal to review the teacher's records, including student performance results,[6] and interview the teacher.[7] If a principal believes students would not benefit from the placement, he or she may request an alternative placement subject to the approval by the superintendent.[8] However, the superintendent must accept the principal's decision to refuse placement or transfer of instructional personnel if the instructional personnel has a performance evaluation rating of needs improvement or unsatisfactory.[9]

Florida Principal Leadership Standards

The Florida Principal Leadership Standards (FPLS) are Florida's core expectations for effective school administrators, including school principals.[10] The FPLS are research-based; represent necessary knowledge, skills, and abilities for effective school leadership; and are the basis for school administrator performance evaluations, professional development systems, preparation programs, and certification requirements.[11] The FPLS emphasize the ability to improve student

[1] Section 1001.54, F.S.
[2] Section 1002.23, F.S., is referred to as the Family and School Partnership for Student Achievement Act.
[3] Instructional personnel include classroom teachers; staff who provide student personnel services, e.g., certified school counselors, social workers, career specialists, and school psychologists; librarians and media specialists; other instructional staff, e.g., learning resource specialists; and education paraprofessionals under the direct supervision of instructional personnel. Section 1012.01(2), F.S.
[4] Section 1012.27(1), F.S.
[5] *Id.*
[6] As measured by the instructional personnel's performance evaluation. Sections 1012.28(6) and 1012.34, F.S.
[7] Section 1012.27, F.S.
[8] *Id.*
[9] Section 1012.28(6), F.S.
[10] State Board of Education Rule 6A-5.080, F.A.C.
[11] *Id*.

learning results; development and retention of quality classroom teachers; and school management practices that promote student learning, effective allocation of resources, and efficient operations.[12]

Performance Evaluation

Florida law requires each district school superintendent to establish procedures to evaluate the job performance of district instructional, administrative, and supervisory personnel.[13] School district performance evaluation systems must differentiate among four levels of performance: [14]

- Highly effective;
- Effective;
- Needs improvement, or for instructional personnel in their first three years of employment who need improvement, developing; and
- Unsatisfactory.

The criteria used to measure school administrator performance are student performance, instructional leadership, and professional and job responsibilities.[15] At least one-third of a school administrator's evaluation must be based upon student performance, with certain exceptions.[16] Evaluation of instructional leadership must include performance measures related to the effectiveness of classroom teachers in the school, the administrator's appropriate use of evaluation criteria and procedures, recruitment and retention of effective and highly effective classroom teachers, improvement in the percentage of instructional personnel evaluated at the highly effective or effective level, and other leadership practices that result in student learning growth.[17]

Professional Development

Professional development for school administrators is provided through school district professional development systems including the William Cecil Golden Professional Development Program for School Leaders.[18] This program is established in collaboration with state and national professional leadership organizations and it is designed to respond to Florida's needs for quality school leadership and support the efforts of school leaders in improving instruction and student achievement and developing and retaining quality teachers.[19] Professional development provided through the program must be based upon the FPLS and other school leadership standards.[20]

[12] Section 1012.34, F.S., and Rule 6A-5.080(1)-(2), F.A.C.
[13] Section 1012.34(1)(a), F.S. The term supervisory personnel is not defined. *See* s. 1012.01(3), F.S.
[14] Section 1012.34(2)(e), F.S.
[15] Section 1012.34(3)(a)1., 3., and 4., F.S.
[16] Section 1012.34(3)(a)1., F.S. If less than three years of data are available, the years for which data are available must be used. The proportion of growth or achievement data may be determined by instructional assignment. Section 1012.34(3)(a)1.b., F.S.
[17] Section 1012.34(3)(a)3., F.S.
[18] Section 1012.986, F.S.
[19] *See* ss. 1012. 98(4) and 1012.986, F.S.
[20] Section 1012.986(1)-(2), F.S.

III. Effect of Proposed Changes:

This bill establishes the Principal Autonomy Pilot Program Initiative (PAPPI) within the Department of Education (DOE) to provide a highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management.

Schools selected for participation in PAPPI are exempt from the K-20 Education Code and State Board of Education (SBE) rules, with exceptions.

Participating School Districts

The bill authorizes the SBE to enter into a performance contract with up to three district school boards for participation in PAPPI. The term of the program is three years, at which time the performance of all participating schools in the school district must be evaluated. The SBE may revoke a district's participation in the program during the term of the program and may renew participation upon expiration of the initial term. The bill specifies deadlines for submission and approval of principal autonomy proposals and requires the SBE to adopt rules for administering PAPPI, including criteria for approving proposals.

Principal Autonomy Proposal

The bill requires the school districts seeking to participate in PAPPI to submit a principal autonomy proposal to the SBE for approval. The proposal must:

- Identify three middle or high schools that received at least two school grades of "D" or "F" during the previous three school years;
- Identify three principals who have earned a highly effective rating on the prior year's performance evaluations, one of whom shall be assigned to each of the participating schools;
- Describe the current financial and administrative management of each participating school;
- Identify the areas in which each school principal will have increased fiscal and administrative autonomy, including greater autonomy regarding the hiring of instructional personnel;
- Identify the areas in which each participating school will continue to follow district school board fiscal and administrative policies;
- Explain the methods used to identify the educational strengths and needs of the participating school's students and how student achievement can be improved;
- Establish performance goals for student achievement;
- Explain how increased principal autonomy will help participating schools improve student achievement and school management; and
- Provide each participating school's mission and a description of its student population.

Principal Authority and Responsibilities

The bill revises existing law governing the personnel duties for school principals participating in PAPPI and school budgeting and calculation of expenditures to facilitate implementation of PAPPI. The bill authorizes the principal of a participating school to:

- Select qualified instructional personnel for placement at the school or refuse placement or transfer of instructional personnel by the district school superintendent;
- Deploy financial resources to school programs to help improve student achievement;

- Meet performance goals identified in the principal autonomy proposal; and
- Provide, annually, to the district school superintendent and district school board a budget for the operation of the participating school that identifies how funds are allocated.

The bill requires the principal of each participating school, a three-member leadership team from each participating school, and district personnel working with each participating school to enroll and complete a nationally recognized school turnaround program upon acceptance into the pilot program.

Exemptions

The bill exempts schools participating in PAPPI from the K-20 Education Code and SBE rules, except provisions relating to:

- Election and compensation of district school board members, the election or appointment and compensation of district school superintendents, public meetings and public records requirements, financial disclosure, and conflicts of interest.
- Student assessment program, school grading system, and other school improvement and accountability requirements.
- Services to students with disabilities.
- Civil rights and discrimination.
- Student health, safety, and welfare.
- Uniform opening date for public schools.
- Maximum class size, except that compliance for a participating school is calculated at the school-level average, rather than at the individual classroom level.[21]
- Personnel compensation and salary schedules.
- Workforce reductions for annual contracts for instructional personnel, excluding at-will employees.
- Annual contracts for instructional personnel hired on or after July 1, 2011, excluding at-will employees.
- Personnel performance evaluations.
- Educational facilities, excluding provisions governing covered walkways for relocatables and use of relocatable facilities exceeding 20 years of age.
- Administration and implementation of PAPPI.

Funding of the Program

The Legislature may provide an appropriation to the DOE for the costs of the pilot program, including administrative costs, enrollment costs for the school turnaround program, and an additional scholarship for each participating principal to use at his or her school.

The bill specifies that a school participating in PAPPI must be guaranteed to receive at least 90 percent of the funds generated in the Florida Education Finance Program (FEFP), including gross state and local funds, discretionary lottery funds, and funds from the school district's current

[21] The Florida Constitution provides that class sizes may not exceed 18 students for prekindergarten through 3rd grade; 22 students for 4th through 8th grades; and 25 students for 9th through 12th grades. *Section* 1(a), Art. IX of the State Constitution and s. 1003.03(1), F.S. The law provides for calculation of class size compliance at the school-level average for public schools of choice, including charter schools. Sections 1002.31(5) and 1002.33(16)(b)3., F.S.

operating discretionary millage levy by that school rather than current law which specifies at least 80 percent of the FEFP funds generated by that school.

Evaluation and Reporting

The bill authorizes a school district to participate in the pilot program for a period of three years. The SBE may renew or revoke a school district's participation in PAPPI if the school district fails to meet the requirements of the program.

The bill requires a participating school district to annually submit a report to the SBE regarding program implementation. Upon completion of the program's first three-year term, the Commissioner of Education must submit a full evaluation of the program's effectiveness to the President of the Senate and the Speaker of the House of Representatives by December 1 of that year.

The bill takes effect on July 1, 2016.

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:

Under PCS/SB/SB 434, funding for the pilot program is contingent upon an appropriation in the General Appropriations Act. The Legislature may provide an appropriation to the DOE for the costs of the pilot program, including administrative costs, enrollment costs for the school turnaround program, and an additional scholarship for each participating principal for use at his or her school.

The bill requires the principal of each participating school, a three-member leadership team from each participating school, and district personnel working with each participating school to enroll and complete a nationally recognized school turnaround program upon acceptance into the pilot program.

The bill specifies that schools participating in PAPPI must be guaranteed to receive at least 90 percent of the funds generated in the FEFP by that school rather than current law which specifies at least 80 percent of the funds generated by that school based upon the Florida Education Finance Program (FEFP), including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1011.69 and 1012.28.

This bill creates section 1011.6202 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 January 13, 2016:
The committee substitute:

- Replaces the professional development requirement for pilot program participants to complete the University of Virginia School Turnaround Program with the requirement for participants to complete a nationally recognized school turnaround program.
- Removes the requirement that the Legislature provide $100,000 to each participating district, and $10,000 to each participating principal in the pilot program.

CS by Education Pre-K – 12 on November 18, 2015:
The committee substitute authorizes the exemption from the K-20 Education Code and State Board of Education rules to the schools participating in the Principal Autonomy Pilot Program Initiative rather than their respective school districts.

B. Amendments:

None.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to the Principal Autonomy Pilot Program Initiative; creating s. 1011.6202, F.S.; creating the Principal Autonomy Pilot Program Initiative; providing a procedure for a school district to participate in the pilot program; providing requirements for participating school districts and schools; exempting participating schools from certain laws and rules; requiring principals of participating schools and specified personnel to complete a nationally recognized school turnaround program; providing for the term of participation in the pilot program; providing for renewal or revocation of authorization to participate in the pilot program; providing for reporting, funding, and rulemaking; amending s. 1011.69, F.S.; requiring participating district school boards to allocate a specified percentage of certain funds to participating schools; amending s. 1012.28, F.S.; providing additional authority and responsibilities of the principal of a participating school; providing an effective date.

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

Section 1. Section 1011.6202, Florida Statutes, is created to read:

1011.6202 Principal Autonomy Pilot Program Initiative.—The

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Principal Autonomy Pilot Program Initiative is created within the Department of Education. The purpose of the pilot program is to provide the highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management while complying with constitutional requirements. The State Board of Education may, upon approval of a principal autonomy proposal, enter into a performance contract with up to three district school boards for participation in the pilot program.

(1) PARTICIPATING SCHOOL DISTRICTS.—A Florida school district may submit to the state board for approval a principal autonomy proposal that exchanges statutory and rule exemptions for an agreement to meet performance goals established in the proposal. If approved by the state board, the school district shall be eligible to participate in the pilot program for 3 years. At the end of the 3 years, the performance of all participating schools in the school district shall be evaluated.

(2) PRINCIPAL AUTONOMY PROPOSAL.—

(a) To participate in the pilot program, a school district must:

1. Identify three middle or high schools that received at least two school grades of “D” or “F” pursuant to s. 1008.34 during the previous 3 school years.

2. Identify three principals who have earned a highly effective rating on the prior year’s performance evaluation pursuant to s. 1012.34, one of whom shall be assigned to each of the participating schools.

3. Describe the current financial and administrative

management of each participating school; identify the areas in which each school principal will have increased fiscal and administrative autonomy, including the authority and responsibilities provided in s. 1012.28(8); and identify the areas in which each participating school will continue to follow district school board fiscal and administrative policies.

4. Explain the methods used to identify the educational strengths and needs of the participating school's students and identify how student achievement can be improved.

5. Establish performance goals for student achievement, as defined in s. 1008.34(1), and explain how the increased autonomy of principals will help participating schools improve student achievement and school management.

6. Provide each participating school's mission and a description of its student population.

(b) The state board shall establish criteria, which must include the criteria listed in paragraph (a), for the approval of a principal autonomy proposal.

(c) A school district must submit its principal autonomy proposal to the state board for approval by December 1 in order to begin participation in the subsequent school year. By February 28 of the school year in which the proposal is submitted, the state board shall notify the district school board in writing whether the proposal is approved.

(3) EXEMPTION FROM LAWS.—

(a) With the exception of those laws listed in paragraph (b), a participating school is exempt from the provisions of chapters 1000-1013 and rules of the state board that implement those exempt provisions.

(b) A participating school shall comply with the provisions of chapters 1000-1013, and rules of the state board that implement those provisions, pertaining to the following:

1. Those laws relating to the election and compensation of district school board members, the election or appointment and compensation of district school superintendents, public meetings and public records requirements, financial disclosure, and conflicts of interest.

2. Those laws relating to the student assessment program and school grading system, including chapter 1008.

3. Those laws relating to the provision of services to students with disabilities.

4. Those laws relating to civil rights, including s. 1000.05, relating to discrimination.

5. Those laws relating to student health, safety, and welfare.

6. Section 1001.42(4)(f), relating to the uniform opening date for public schools.

7. Section 1003.03, governing maximum class size, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level for a participating school.

8. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

9. Section 1012.33(5), relating to workforce reductions for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

10. Section 1012.335, relating to annual contracts for instructional personnel hired on or after July 1, 2011. This subparagraph does not apply to at-will employees.

11. Section 1012.34, relating to personnel evaluation procedures and criteria.

12. Those laws pertaining to educational facilities, including chapter 1013, except that s. 1013.20, relating to covered walkways for relocatables, and s. 1013.21, relating to the use of relocatable facilities exceeding 20 years of age, are eligible for exemption.

13. Those laws pertaining to participating school districts, including this section and ss. 1011.69(2) and 1012.28(8).

(4) PROFESSIONAL DEVELOPMENT.—Each participating school district shall require that the principal of each participating school, a three-member leadership team from each participating school, and district personnel working with each participating school complete a nationally recognized school turnaround program which focuses on improving leadership, instructional infrastructure, talent management, and differentiated support and accountability. The required personnel must enroll in the school turnaround program upon acceptance into the pilot program.

(5) TERM OF PARTICIPATION.—The state board shall authorize a school district to participate in the pilot program for a period of 3 years commencing with approval of the principal autonomy proposal. Authorization to participate in the pilot program may be renewed upon action of the state board. The state board may revoke authorization to participate in the pilot program if the school district fails to meet the requirements of this section during the 3-year period.

(6) REPORTING.—Each participating school district shall

submit an annual report to the state board. The state board shall annually report on the implementation of the Principal Autonomy Pilot Program Initiative. Upon completion of the pilot program's first 3-year term, the Commissioner of Education shall submit to the President of the Senate and the Speaker of the House of Representatives by December 1 a full evaluation of the effectiveness of the pilot program.

(7) FUNDING.—The Legislature may appropriate funding to the department in the General Appropriations Act for the costs of the pilot program, including administrative costs and enrollment costs for the school turnaround program, and an additional scholarship to each participating principal to be used at his or her school.

(8) RULEMAKING.—The State Board of Education shall adopt rules to administer this section.

Section 2. Subsection (2) of section 1011.69, Florida Statutes, is amended to read:

1011.69 Equity in School-Level Funding Act.—

(2) Beginning in the 2003-2004 fiscal year, district school boards shall allocate to schools within the district an average of 90 percent of the funds generated by all schools and guarantee that each school receives at least 80 percent of the funds generated by that school based upon the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy. A school participating in the Principal Autonomy Pilot Program Initiative under s. 1011.6202 shall be guaranteed an allocation

899122

576-02097-16

of at least 90 percent of the funds generated by that school. Total funding for each school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the school during the full-time equivalent student survey periods designated by the Commissioner of Education. If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in the schools in the district shall be provided federal funds.

Section 3. Subsection (8) is added to section 1012.28, Florida Statutes, to read:

1012.28 Public school personnel; duties of school principals.—

(8) The principal of a school participating in the Principal Autonomy Pilot Program Initiative under s. 1011.6202 has the following additional authority and responsibilities:

(a) In addition to the authority provided in subsection (6), the authority to select qualified instructional personnel for placement or to refuse to accept the placement or transfer of instructional personnel by the district school superintendent. Placement of instructional personnel at a participating school in a participating school district does not affect the employee's status as a school district employee.

(b) The authority to deploy financial resources to school programs at the principal's discretion to help improve student achievement, as defined in s. 1008.34(1), and meet performance goals identified in the principal autonomy proposal submitted pursuant to s. 1011.6202.

899122

576-02097-16

(c) To annually provide to the district school superintendent and the district school board a budget for the operation of the participating school that identifies how funds provided pursuant to s. 1011.69(2) are allocated. The school district shall include the budget in the annual report provided to the State Board of Education pursuant to s. 1011.6202(6).

Section 4. This act shall take effect July 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 Appropriations

BILL:	CS/SB 434
INTRODUCER:	Education Pre-K - 12 Committee; and Senators Garcia and Gaetz
SUBJECT:	Principal Autonomy Pilot Program Initiative
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 434 establishes the Principal Autonomy Pilot Program Initiative (PAPPI) within the Department of Education (DOE) to provide a highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management. Schools selected for participation in PAPPI are exempt from the K-20 Education Code and State Board of Education (SBE) rules, with exceptions.

The bill requires the Legislature to provide an appropriation to the DOE for the costs of the pilot program, including $100,000 to each participating school district for enrollment in the University of Virginia School Turnaround Program and a $10,000 scholarship for each participating principal for use at his or her school.

The bill takes effective on July 1, 2016.

II. Present Situation:

Principal Authority and Responsibilities

A public school principal is responsible for: [1]

[1] Section 1001.54, F.S.

- Fully supporting the authority of classroom teachers and school bus drivers regarding student discipline and conduct.
- Providing instructional leadership in the development, revision, and implementation of a school improvement plan.
- Accurate and timely compliance with statutory reporting requirements.
- The management and care of instructional materials.
- Facilitating parental involvement in their child's education and providing information to parents regarding their child's educational progress and available educational choices pursuant to s. 1002.23, F.S.[2]

When filling instructional positions[3] at the school level, the district school superintendent must consider nominations received from school principals of the respective schools in the school district.[4] The superintendent then must make recommendations to the district school board regarding each position to be filled and the persons to fill such positions.[5] Before transferring a classroom teacher from one school to another, the superintendent must consult with the principal of the receiving school and allow the principal to review the teacher's records, including student performance results,[6] and interview the teacher.[7] If a principal believes students would not benefit from the placement, he or she may request an alternative placement subject to the approval by the superintendent.[8] However, the superintendent must accept the principal's decision to refuse placement or transfer of instructional personnel if the instructional personnel has a performance evaluation rating of needs improvement or unsatisfactory.[9]

Florida Principal Leadership Standards

The Florida Principal Leadership Standards (FPLS) are Florida's core expectations for effective school administrators, including school principals.[10] The FPLS are research-based; represent necessary knowledge, skills, and abilities for effective school leadership; and are the basis for school administrator performance evaluations, professional development systems, preparation programs, and certification requirements.[11] The FPLS emphasize the ability to improve student learning results; development and retention of quality classroom teachers; and school management practices that promote student learning, effective allocation of resources, and efficient operations.[12]

[2] Section 1002.23, F.S., is referred to as the Family and School Partnership for Student Achievement Act.
[3] Instructional personnel include classroom teachers; staff who provide student personnel services, e.g., certified school counselors, social workers, career specialists, and school psychologists; librarians and media specialists; other instructional staff, e.g., learning resource specialists; and education paraprofessionals under the direct supervision of instructional personnel. Section 1012.01(2), F.S.
[4] Section 1012.27(1), F.S.
[5] *Id.*
[6] As measured by the instructional personnel's performance evaluation. Sections 1012.28(6) and 1012.34, F.S.
[7] Section 1012.27, F.S.
[8] *Id.*
[9] Section 1012.28(6), F.S.
[10] State Board of Education Rule 6A-5.080, F.A.C.
[11] *Id*.
[12] Section 1012.34, F.S., and Rule 6A-5.080(1)-(2), F.A.C.

Performance Evaluation

Florida law requires each district school superintendent to establish procedures to evaluate the job performance of district instructional, administrative, and supervisory personnel.[13] School district performance evaluation systems must differentiate among four levels of performance: [14]

- Highly effective;
- Effective;
- Needs improvement, or for instructional personnel in their first three years of employment who need improvement, developing; and
- Unsatisfactory.

The criteria used to measure school administrator performance are student performance, instructional leadership, and professional and job responsibilities.[15] At least one-third of a school administrator's evaluation must be based upon student performance, with certain exceptions.[16] Evaluation of instructional leadership must include performance measures related to the effectiveness of classroom teachers in the school, the administrator's appropriate use of evaluation criteria and procedures, recruitment and retention of effective and highly effective classroom teachers, improvement in the percentage of instructional personnel evaluated at the highly effective or effective level, and other leadership practices that result in student learning growth.[17]

Professional Development

Professional development for school administrators is provided through school district professional development systems including the William Cecil Golden Professional Development Program for School Leaders.[18] This program is established in collaboration with state and national professional leadership organizations and it is designed to respond to Florida's needs for quality school leadership and support the efforts of school leaders in improving instruction and student achievement and developing and retaining quality teachers.[19] Professional development provided through the program must be based upon the FPLS and other school leadership standards.[20]

III. Effect of Proposed Changes:

This bill establishes the Principal Autonomy Pilot Program Initiative (PAPPI) within the Department of Education (DOE) to provide a highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management.

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[13] Section 1012.34(1)(a), F.S. The term supervisory personnel is not defined. *See* s. 1012.01(3), F.S.
[14] Section 1012.34(2)(e), F.S.
[15] Section 1012.34(3)(a)1., 3., and 4., F.S.
[16] Section 1012.34(3)(a)1., F.S. If less than three years of data are available, the years for which data are available must be used. The proportion of growth or achievement data may be determined by instructional assignment. Section 1012.34(3)(a)1.b., F.S.
[17] Section 1012.34(3)(a)3., F.S.
[18] Section 1012.986, F.S.
[19] *See* ss. 1012. 98(4) and 1012.986, F.S.
[20] Section 1012.986(1)-(2), F.S.

Schools selected for participation in PAPPI are exempt from the K-20 Education Code and State Board of Education (SBE) rules, with exceptions.

Participating School Districts

The bill authorizes the SBE to enter into a performance contract with up to three district school boards for participation in PAPPI. The term of the program is three years, at which time the performance of all participating schools in the school district must be evaluated. The SBE may revoke a district's participation in the program during the term of the program and may renew participation upon expiration of the initial term. The bill specifies deadlines for submission and approval of principal autonomy proposals and requires the SBE to adopt rules for administering PAPPI, including criteria for approving proposals.

Principal Autonomy Proposal

The bill requires the school districts seeking to participate in PAPPI to submit a principal autonomy proposal to the SBE for approval. The proposal must:

- Identify three middle or high schools that received at least two school grades of "D" or "F" during the previous three school years;
- Identify three principals who have earned a highly effective rating on the prior year's performance evaluations, one of whom shall be assigned to each of the participating schools;
- Describe the current financial and administrative management of each participating school;
- Identify the areas in which each school principal will have increased fiscal and administrative autonomy, including greater autonomy regarding the hiring of instructional personnel;
- Identify the areas in which each participating school will continue to follow district school board fiscal and administrative policies;
- Explain the methods used to identify the educational strengths and needs of the participating school's students and how student achievement can be improved;
- Establish performance goals for student achievement;
- Explain how increased principal autonomy will help participating schools improve student achievement and school management; and
- Provide each participating school's mission and a description of its student population.

Principal Authority and Responsibilities

The bill revises existing law governing the personnel duties for school principals participating in PAPPI and school budgeting and calculation of expenditures to facilitate implementation of PAPPI. The bill authorizes the principal of a participating school to:

- Select qualified instructional personnel for placement at the school or refuse placement or transfer of instructional personnel by the district school superintendent;
- Deploy financial resources to school programs to help improve student achievement;
- Meet performance goals identified in the principal autonomy proposal; and
- Provide, annually, to the district school superintendent and district school board a budget for the operation of the participating school that identifies how funds are allocated.

The bill requires the principal of each participating school, a three-member leadership team from each participating school, and district personnel working with each participating school to enroll and complete the University of Virginia School Turnaround Program upon acceptance into the pilot program. Each participating school district receives $100,000 from the DOE for participation in the University of Virginia School Turnaround Program.

The University of Virginia School Turnaround Program is a professional development program for school-level leaders established in collaboration with the University of Virginia Darden School of Business and the Curry School of Education.[21] The three-year program is designed to respond to the needs of underperforming schools by helping education leaders identify individual key issues and develop individual strategies to turn around a school.[22] The program's managers accomplish these tasks by, among other things, hosting workshops to develop turnaround plans, helping participating schools identify qualified school leaders to oversee school turnaround, and conducting on-site visits to help participating schools accomplish turnaround goals.[23] The program's managers and participating schools also collaborate to develop plans designed to help teachers and students reach performance goals.[24]

Exemptions

The bill exempts schools participating in PAPPI from the K-20 Education Code and SBE rules, except provisions relating to:

- Election and compensation of district school board members, the election or appointment and compensation of district school superintendents, public meetings and public records requirements, financial disclosure, and conflicts of interest.
- Student assessment program, school grading system, and other school improvement and accountability requirements.
- Services to students with disabilities.
- Civil rights and discrimination.
- Student health, safety, and welfare.
- Uniform opening date for public schools.
- Maximum class size, except that compliance for a participating school is calculated at the school-level average, rather than at the individual classroom level.[25]
- Personnel compensation and salary schedules.
- Workforce reductions for annual contracts for instructional personnel, excluding at-will employees.
- Annual contracts for instructional personnel hired on or after July 1, 2011, excluding at-will employees.
- Personnel performance evaluations.

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[21] University of Virginia, *Darden/Curry Partnership for Leadership in Education*, http://www.darden.virginia.edu/darden-curry-ple/about/ (last visited November 10, 2015).
[22] University of Virginia, *Darden Partnership for Leadership in Education*, *available at* http://web3.darden.virginia.edu/ple/.
[23] *Id.*
[24] *Id.*
[25] The Florida Constitution provides that class sizes may not exceed 18 students for prekindergarten through 3rd grade; 22 students for 4th through 8th grades; and 25 students for 9th through 12th grades. *Section* 1(a), Art. IX of the State Constitution and s. 1003.03(1), F.S. The law provides for calculation of class size compliance at the school-level average for public schools of choice, including charter schools. Sections 1002.31(5) and 1002.33(16)(b)3., F.S.

- Educational facilities, excluding provisions governing covered walkways for relocatables and use of relocatable facilities exceeding 20 years of age.
- Administration and implementation of PAPPI.

Funding of the Program

The bill requires the Legislature to provide an appropriation to the DOE for the costs of the pilot program, including administrative costs and enrollment costs for the University of Virginia School Turnaround Program and an additional $10,000 for each participating principal to use at his or her school.

The bill specifies that a school participating in PAPPI must be guaranteed to receive at least 90 percent of the funds generated in the Florida Education Finance Program (FEFP), including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy by that school rather than current law which specifies at least 80 percent of the FEFP funds generated by that school.

Evaluation and Reporting

The bill authorizes a school district to participate in the pilot program for a period of three years. The SBE may renew or revoke a school district's participation in PAPPI if the school district fails to meet the requirements of the program.

The bill requires a participating school district to annually submit a report to the SBE regarding program implementation. Upon completion of the program's first three-year term, the Commissioner of Education must submit a full evaluation of the program's effectiveness to the President of the Senate and the Speaker of the House of Representatives by December 1 of that year.

The bill takes effect on July 1, 2016.

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:

CS/SB 434 requires the Legislature to provide an appropriation to the DOE for the costs of the pilot program, including administrative costs and enrollment costs for the University of Virginia School Turnaround Program. If all potential schools participate in the pilot, the total appropriation required for the three participating districts in the 2016-2017 fiscal year would be $390,000.

The bill requires the principal of each participating school, a three-member leadership team from each participating school, and district personnel working with each participating school to enroll and complete the University of Virginia School Turnaround Program upon acceptance into the pilot program. Each participating school district would receive $100,000 from the DOE for participation in the University of Virginia School Turnaround Program and an additional $10,000 for each participating principal to use at his or her participating school.

The bill specifies that schools participating in PAPPI must be guaranteed to receive at least 90 percent of the funds generated in the FEFP by that school rather than current law which specifies at least 80 percent of the funds generated by that school based upon the Florida Education Finance Program (FEFP), including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1011.69 and 1012.28.

This bill creates section 1011.6202 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 Education Pre-K – 12 on November 18, 2015:
The committee substitute authorizes the exemption from the K-20 Education Code and State Board of Education rules to the schools participating in the Principal Autonomy Pilot Program Initiative rather than their respective school districts.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senators Garcia and Gaetz

581-01399-16 2016434c1

A bill to be entitled

An act relating to the Principal Autonomy Pilot Program Initiative; creating s. 1011.6202, F.S.; creating the Principal Autonomy Pilot Program Initiative; providing a procedure for a school district to participate in the pilot program; providing requirements for participating school districts and schools; exempting participating schools from certain laws and rules; requiring principals of participating schools and specified personnel to participate in the University of Virginia School Turnaround Program; providing for the term of participation in the pilot program; providing for renewal or revocation of authorization to participate in the pilot program; providing for funding, reporting, and rulemaking; amending s. 1011.69, F.S.; requiring participating district school boards to allocate a specified percentage of certain funds to participating schools; amending s. 1012.28, F.S.; providing additional authority and responsibilities of the principal of a participating school; providing an effective date.

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

Section 1. Section 1011.6202, Florida Statutes, is created to read:

1011.6202 Principal Autonomy Pilot Program Initiative.—The Principal Autonomy Pilot Program Initiative is created within

581-01399-16 2016434c1

the Department of Education. The purpose of the pilot program is to provide the highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management while complying with constitutional requirements. The State Board of Education may, upon approval of a principal autonomy proposal, enter into a performance contract with up to three district school boards for participation in the pilot program.

(1) PARTICIPATING SCHOOL DISTRICTS.—A Florida school district may submit to the state board for approval a principal autonomy proposal that exchanges statutory and rule exemptions for an agreement to meet performance goals established in the proposal. If approved by the state board, the school district shall be eligible to participate in the pilot program for 3 years. At the end of the 3 years, the performance of all participating schools in the school district shall be evaluated.

(2) PRINCIPAL AUTONOMY PROPOSAL.—

(a) To participate in the pilot program, a school district must:

1. Identify three middle or high schools that received at least two school grades of "D" or "F" pursuant to s. 1008.34 during the previous 3 school years.

2. Identify three principals who have earned a highly effective rating on the prior year's performance evaluation pursuant to s. 1012.34, one of whom shall be assigned to each of the participating schools.

3. Describe the current financial and administrative management of each participating school; identify the areas in

which each school principal will have increased fiscal and administrative autonomy, including the authority and responsibilities provided in s. 1012.28(8); and identify the areas in which each participating school will continue to follow district school board fiscal and administrative policies.

4. Explain the methods used to identify the educational strengths and needs of the participating school's students and identify how student achievement can be improved.

5. Establish performance goals for student achievement, as defined in s. 1008.34(1), and explain how the increased autonomy of principals will help participating schools improve student achievement and school management.

6. Provide each participating school's mission and a description of its student population.

(b) The state board shall establish criteria, which must include the criteria listed in paragraph (a), for the approval of a principal autonomy proposal.

(c) A school district must submit its principal autonomy proposal to the state board for approval by December 1 in order to begin participation in the subsequent school year. By February 28 of the school year in which the proposal is submitted, the state board shall notify the district school board in writing whether the proposal is approved.

(3) EXEMPTION FROM LAWS.—

(a) With the exception of those laws listed in paragraph (b), a participating school is exempt from the provisions of chapters 1000-1013 and rules of the state board that implement those exempt provisions.

(b) A participating school shall comply with the provisions

of chapters 1000-1013, and rules of the state board that implement those provisions, pertaining to the following:

1. Those laws relating to the election and compensation of district school board members, the election or appointment and compensation of district school superintendents, public meetings and public records requirements, financial disclosure, and conflicts of interest.

2. Those laws relating to the student assessment program and school grading system, including chapter 1008.

3. Those laws relating to the provision of services to students with disabilities.

4. Those laws relating to civil rights, including s. 1000.05, relating to discrimination.

5. Those laws relating to student health, safety, and welfare.

6. Section 1001.42(4)(f), relating to the uniform opening date for public schools.

7. Section 1003.03, governing maximum class size, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level for a participating school.

8. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

9. Section 1012.33(5), relating to workforce reductions for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

10. Section 1012.335, relating to annual contracts for instructional personnel hired on or after July 1, 2011. This subparagraph does not apply to at-will employees.

11. Section 1012.34, relating to personnel evaluation

procedures and criteria.

12. Those laws pertaining to educational facilities, including chapter 1013, except that s. 1013.20, relating to covered walkways for relocatables, and s. 1013.21, relating to the use of relocatable facilities exceeding 20 years of age, are eligible for exemption.

13. Those laws pertaining to participating school districts, including this section and ss. 1011.69(2) and 1012.28(8).

(4) PROFESSIONAL DEVELOPMENT.—Each participating school district shall require that the principal of each participating school, a three-member leadership team from each participating school, and district personnel working with each participating school complete the University of Virginia School Turnaround Program. The required personnel must enroll in the University of Virginia School Turnaround Program upon acceptance into the pilot program. Each participating school district shall receive $100,000 from the department for participation in the University of Virginia School Turnaround Program.

(5) TERM OF PARTICIPATION.—The state board shall authorize a school district to participate in the pilot program for a period of 3 years commencing with approval of the principal autonomy proposal. Authorization to participate in the pilot program may be renewed upon action of the state board. The state board may revoke authorization to participate in the pilot program if the school district fails to meet the requirements of this section during the 3-year period.

(6) REPORTING.—Each participating school district shall submit an annual report to the state board. The state board

shall annually report on the implementation of the Principal Autonomy Pilot Program Initiative. Upon completion of the pilot program's first 3-year term, the Commissioner of Education shall submit to the President of the Senate and the Speaker of the House of Representatives by December 1 a full evaluation of the effectiveness of the pilot program.

(7) FUNDING.—The Legislature shall provide an appropriation to the department for the costs of the pilot program, including administrative costs and enrollment costs for the University of Virginia School Turnaround Program, and an additional scholarship of $10,000 to each participating principal to be used at his or her school.

(8) RULEMAKING.—The State Board of Education shall adopt rules to administer this section.

Section 2. Subsection (2) of section 1011.69, Florida Statutes, is amended to read:

1011.69 Equity in School-Level Funding Act.—

(2) Beginning in the 2003-2004 fiscal year, district school boards shall allocate to schools within the district an average of 90 percent of the funds generated by all schools and guarantee that each school receives at least 80 percent, except schools participating in the Principal Autonomy Pilot Program Initiative under s. 1011.6202 are guaranteed to receive at least 90 percent, of the funds generated by that school based upon the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy. Total funding for each school shall be recalculated during the year to

reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the school during the full-time equivalent student survey periods designated by the Commissioner of Education. If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in the schools in the district shall be provided federal funds.

Section 3. Subsection (8) is added to section 1012.28, Florida Statutes, to read:

1012.28 Public school personnel; duties of school principals.—

(8) The principal of a school participating in the Principal Autonomy Pilot Program Initiative under s. 1011.6202 has the following additional authority and responsibilities:

(a) In addition to the authority provided in subsection (6), the authority to select qualified instructional personnel for placement or to refuse to accept the placement or transfer of instructional personnel by the district school superintendent. Placement of instructional personnel at a participating school in a participating school district does not affect the employee's status as a school district employee.

(b) The authority to deploy financial resources to school programs at the principal's discretion to help improve student achievement, as defined in s. 1008.34(1), and meet performance goals identified in the principal autonomy proposal submitted pursuant to s. 1011.6202.

(c) To annually provide to the district school superintendent and the district school board a budget for the

operation of the participating school that identifies how funds provided pursuant to s. 1011.69(2) are allocated. The school district shall include the budget in the annual report provided to the State Board of Education pursuant to s. 1011.6202(6).

Section 4. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 436 (418634)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee and Senator Simpson
SUBJECT:	Terroristic Threats
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Fav/CS**
2.	Clodfelter	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 436 amends sections 790.163 and 790.164, Florida Statutes., which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner. Commission of either of these offenses is a second degree felony, punishable by up to 15 years imprisonment and a $10,000 fine.

The bill also creates section 836.12, Florida Statutes, which includes a provision requiring a person who is convicted of violating section 790.163, Florida Statutes, or section 790.164, Florida Statues, to pay restitution for all costs and damages caused by an evacuation that results from the violation if it:

- Caused the occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations; or
- Involved a threat against a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or a family member of one of the identified persons.

Newly created section 836.12, Florida Statutes, also makes it unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing, terror or the evacuation of a building, place of assembly, or facility of public transportation. The offense does not have a specified penalty.

The Criminal Justice Impact Conference has not reviewed the bill in its current form. However, it appears that the bill likely will result in an indeterminate increase in the prison population.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Threat to Throw, Project, Place or Discharge any Destructive Device

Section 790.162, F.S., makes it a second degree felony[1] if a person threatens to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.

False reports concerning planting bomb, explosive, or weapon of mass destruction

Section 790.163, F.S., makes it a second degree felony if a person makes a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive, or weapon of mass destruction.[2] Persons who are convicted of commission of this offense that resulted in the mobilization or action of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

False reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property

Section 790.164, F.S., includes the same elements and has the same penalties as s. 790.163, F.S., but adds the additional element that the threat must relate to property owned by the state or any political subdivision. Additionally, this section prohibits threats concerning any act of arson or other violence to property owned by the state or a political subdivision. This section includes the same provision for restitution that is in s. 790.163, F.S.

Planting of "hoax bomb"

Section 790.165, F.S., makes it a second degree felony if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a "hoax bomb." [3]

[1] A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. *See,* ss. 775.082 and 775.083, F.S.

[2] "Weapon of mass destruction" is defined in s. 790.166(1)(a), F.S., to mean any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any device or object involving a biological agent or that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life or any biological agent, toxin, vector, or delivery system.

[3] "Hoax bomb" is defined in s. 790.165(1), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain a destructive device or explosive but is in fact inoperable.

Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction

Section 790.166, F.S., makes it a first degree felony[4] if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a weapon of mass destruction.[5] The offense is a second degree felony if the device is a hoax weapon of mass destruction.[6]

False reports of commission of crimes

Section 817.49, F.S., provides that it is a first degree misdemeanor[7] to willfully impart, convey or cause to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under Florida law, knowing the information to be false in that no such crime had actually been committed.

Threats; extortion

Section 836.05, F.S., provides that it is a second degree felony to maliciously, by verbal, written, or printed communication, to injure the person or property of another with intent to compel the threatened person, or any other person, to do any act or refrain from doing any act against his or her will.

Written Threats to Kill or Do Bodily Injury

Section 836.10, F.S., provides that it is a second degree felony to write or compose and send, or procure the sending of, any written communication containing a threat to kill or do bodily injury to the person to whom the letter is sent or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.

False reports to law enforcement authorities

Section 837.05, F.S., provides that it is a first degree misdemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime. The penalty may be enhanced to a third degree felony under certain circumstances.

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[4] A first degree felony is punishable by up to 30 years in state prison and a fine of up to $10,000. *See* ss. 775.082 and 775.083, F.S.

[5] For purposes of this section, the term "weapon of mass destruction" does not include self-defense devices that are lawfully possessed or used for self protection.

[6] "Hoax weapon of mass destruction" is defined in s. 790.166(1)(b), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.

[7] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. *See*, ss. 775.082, and 775.083, F.S.

Corruption by threat against public servants

Section 838.021, F.S., makes it a felony to unlawfully harm or threaten to harm any public servant,[8] his or her immediate family, or any other person whose welfare the public servant is interested with the intent or purpose of:

- Influencing the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty[9];
- Causing or inducing the public servant to use or exert, or procure the use of exertion of any influence upon or with any other public servant regarding any act or omission which the defendant believes to be or the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty.[10]

Prosecution under this section does not require allegation or proof that:

- The public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way;
- That the public servant had assumed office;
- That the matter was properly pending before him or her or might by law properly be brought before him or her;
- That the public servant possessed jurisdiction over the matter; or
- That his or her official action was necessary to achieve the person's purpose.[11]

It is a second degree felony if the defendant actually does harm or a third degree felony[12] if the defendant threatens harm.

Breach of the peace; disorderly conduct

Section 877.03, F.S., provides that it is a second degree misdemeanor[13] to "… engage in such conduct as to constitute a breach of the peace or disorderly conduct." The Florida Supreme Court has narrowed the scope of the conduct that is prohibited under this section:

> In light of these considerations, we now limit the application of Section 877.03 so that it shall hereafter only apply either to words which "by their very utterance ... inflict injury or tend to incite an immediate breach of the peace," or to words, known to be false, reporting some physical hazard in circumstances where such a report creates a clear and present danger of bodily harm to others. We construe the statute so that no words except "fighting words" or words like shouts of "fire" in a crowded theatre fall within its proscription, in order to avoid the constitutional

[8] Section 838.021, F.S.
[9] Section 838.021(1)(a), F.S.
[10] Section 838.021(1)(b), F.S.
[11] Section 838.021(2), F.S.
[12] A third degree felony is punishable by up to 5 years in state prison and a fine of up to $5,000. *See,* ss. 775.082 and 775.083, F.S.
[13] A second degree misdemeanor is punishable by up to sixty days in county jail and a $500 fine. *See,* ss. 775.082, and 775.083, F.S.

problem of overbreadth, and "the danger that a citizen will be punished as a criminal for exercising his right of free speech."[14]

Disruption of educational institutions or school boards

Section 877.13, F.S., provides that it is a second degree misdemeanor to knowingly disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property; to knowingly interfere with the attendance of any other school pupil or school employee in a school or classroom; or to engage in any school campus or school function disruption or disturbance which interferes with the educational processes or with the orderly conduct of a school campus, school, or school board function or activity on school board property.

The Pasco Sheriff's Office (Sheriff's Office) asserts that this bill would address issues that existing statutes do not, including clearly prohibiting threats to do harm by use of firearms. According to the Sheriff's Office, the bill's inclusion of all types of threats, application even if a specific victim is not identified in the threat, and inclusion of threats that are made with the intent to cause terror or evacuation of a location, would give law enforcement the necessary tools to bring charges when these types of events take place.

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill amend ss. 790.163 and 790.164, F.S., which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner.[15] Commission of either of these offenses is a second degree felony, punishable by up to 15 years imprisonment and a $10,000 fine.

Section 3 of the bill creates s. 836.12, F.S., relating to terroristic threats. Subsection (1) defines "law enforcement officer" to mean the same as the definition of the term in s. 943.10, F.S., and defines "family member" to be "an individual related to the person by blood or marriage; or an individual to whom the person stands in loco parentis."[16]

Subsection (2) makes it unlawful to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

- Terror; or
- Evacuation of a building, place of assembly, or facility of public transportation.

[14] *State v. Saunders*, 339 So.2d 641, 644 (Fla.1976) (internal citations omitted) (quoting *White v. State*, 330 So.2d 3, 7 (Fla.1976), and *Spears v. State*, 337 So.2d 977, 980 (Fla.1976)).

[15] Section 790.194, F.S., differs from s. 790.193, F.S., by adding an additional element of proof that the threat was made against property owned by the state or a political subdivision. As worded, the amendment to s. 790.194, F.S., does not apply the additional element of proof to false reports concerning use of a firearm in a violent manner. Therefore, there is no difference between the elements of proof for the two offenses with regard to false reports concerning use of a firearm in a violent manner.

[16] "In loco parentis" means "in the place of a parent." MERRIAM-WEBSTER, *In Loco Parentis*, http://www.merriam-webster.com/dictionary/in%20loco%20parentis (last visited February 5, 2016).

The bill does not provide any penalty for this unlawful act.[17]

Subsection (3) creates a new criminal offense that applies to a person who violates s. 790.163, F.S., or s. 790.164, F.S., if the violation:

- Causes occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations; or
- Involves a threat against a law enforcement officer, a state attorney or assistant state attorney, a firefighter, a judge, an elected official, or any of their family members.

Like ss. 790.163 and 790.164, F.S., the new offense created in subsection (3) is a second degree felony.[18]

Subsection (4) provides that a person who is convicted of violating subsection (3) must pay restitution for all costs and damages caused by an evacuation resulting from the violation, in addition to any other restitution or penalty provided by law.

Section 4 of the bill amends s. 921.0022, the Criminal Punishment Code Offense Severity Ranking Chart (Ranking Chart), to add false reports concerning use of a firearm in a violent manner to the description of ss. 790.163 and 790.164, F.S.

Sections 5 and 6 of the bill republish ss. 1006.07(2)(m) and 1006.13(2)(b), F.S., respectively, to incorporate amendments made to s. 790.163, F.S.

The bill has an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[17] The unlawful act is not a crime because no penalty is specified and the new offense is not designated as a felony or a misdemeanor. If considered a noncriminal violation, the unlawful act is punishable by a fine not exceeding $500. *See* ss. 775.08 and 775.083, F.S.

[18] Section 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking Chart (Ranking Chart), ranks criminal offenses from Levels 1 through 10, with Level 1 including the least severe offenses and Level 10 including the most severe offenses. The rankings assign sentencing points that are used to calculate the lowest permissible sentence that may be imposed for an offense. Section 790.163 is ranked in Level 5 of the Ranking Chart and s. 790.164, F.S., is ranked in Level 6. The new offense is not listed in the Ranking Chart, and therefore is ranked in Level 4 by operation of s. 921.0023, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/CS/SB 436 differs significantly from CS/SB 436. As a result, the Criminal Justice Impact Conference (CJIC) estimate for HB 257, which is similar to CS/SB 436, can no longer be used to estimate the fiscal impact of PCS/CS/SB 436. The new criminal offenses created in ss. 790.163 and 790.164, F.S., by the proposed committee substitute may be chargeable as crimes under current law in many factual situations. However, it is not possible to project how often the new offenses would be charged or, if there is an existing offense, whether charging the criminal activity as a violation of ss. 790.163 or 790.164, F.S., would result in an increase in the penalty. Therefore, it appears that PCS/CS/SB 436 will result in an indeterminate increase in the prison population.

VI. Technical Deficiencies:

- As noted in Section III of this Analysis, no penalty is specified for the unlawful activity proscribed in s. 836.12 (2), F.S., created by the bill, and the unlawful activity is not designated as a felony or a misdemeanor. Therefore, the unlawful activity is not a crime but may be a noncriminal violation punishable by a fine not exceeding $500. *See* ss. 775.08 and 775.083, F.S.
- The unlawful act created in new s. 836.12(2), F.S., does not include definitions of the terms "terror" or "facility of public transportation." As a result, an offender who is charged with committing the unlawful act may claim that the statute is unconstitutional because of vagueness. *See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).
- Proving a violation of the second degree felony offense created in new s. 836.12(3), F.S., requires proof that the offender violated either s. 790.693 or 790.694, F.S., plus proof of an additional element. However, the new offense would be ranked as a less severe offense on the Ranking Chart.
- Consideration should be given to amending ss. 1006.07(2)(m) and 1006.13(3)(b), F.S., to include a reference to s. 790.164, F.S., which applies to threats involving school property.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 790.163, 790.164, and 921.0022.

This bill creates section 836.12, of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 1006.7(2)(m) and 1006.13(3)(b).

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:
The committee substitute:

- Amends ss. 790.163 and 790.164, F.S., to prohibit making a false report concerning use of a firearm in a violent manner.
- Creates s. 835.12, F.S., which:
  - Expands the requirement to pay restitution for costs and damages that result from a violation of s. 790.163 or s. 790.164, F.S.; and
  - Makes threatening to commit a crime of violence in specified circumstances an unlawful act.

CS by Criminal Justice on January 25, 2016:

- Adds and clarifies definitions.
- Revises the prohibition in the bill to apply to threats to commit a crime of violence with intent to cause, or reckless disregard for causing terror or the evacuation of a public building, place of assembly, or facility of public transportation.
- Clarifies the requirement for persons convicted under the bill to pay restitution.
- The effective date is changed from October 1, 2016 to July 1, 2016.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 108 - 139
and insert:
836.12 Threats.—
(1) As used in this section, the term:
(a) "Family member" means:
1. An individual related to another individual by blood or marriage; or
2. An individual who stands in loco parentis to another

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individual.

(b) "Law enforcement officer" means:

1. A law enforcement officer as defined in s. 943.10; or

2. A federal law enforcement officer as defined in s. 901.1505.

(2) Any person who threatens a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member of such persons, with death or serious bodily harm commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who commits a second or subsequent violation of subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

And the title is amended as follows:

Delete lines 3 - 11

and insert:

threats of violence; amending ss. 790.163 and 790.164, F.S.; creating the crime of falsely reporting the use of firearms in a violent manner against a person or persons; creating s. 836.12, F.S.; defining the terms "family member" and "law enforcement officer"; providing criminal penalties for a person who threatens specified persons with death or serious bodily harm; amending s. 921.0022, F.S.; conforming

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576-03396-16

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

A bill to be entitled

An act relating to relating to the crime of making threats of terror or violence ; amending ss. 790.163 and 790.164, F.S.; creating the crime of falsely reporting the use of firearms in a violent manner against a person or persons; creating s. 836.12, F.S.; defining the terms "family member of a person" and "law enforcement officer"; providing a criminal penalty for a violation of specified provisions under certain circumstances; requiring payment of restitution; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; reenacting ss. 1006.07(2)(m) and 1006.13(3)(b), F.S., relating to district school board duties relating to student discipline and school safety and a policy of zero tolerance for crime and victimization, respectively, to incorporate the amendment made to s. 790.163, F.S., in references thereto; providing an effective date.

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

Section 1. Section 790.163, Florida Statutes, is amended to read:

790.163 False report concerning ~~about~~ planting a bomb, an explosive, or a weapon of mass destruction, or concerning use of firearms in a violent manner; penalty.—

(1) It is unlawful for any person to make a false report,

418634

576-03396-16

with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction as defined in s. 790.166, or concerning the use of firearms in a violent manner against a person or persons. A person who violates this subsection~~; and any person convicted thereof~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Notwithstanding any other law, adjudication of guilt or imposition of sentence for a violation of this section may not be suspended, deferred, or withheld. However, the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(3) Proof that a person accused of violating this section knowingly made a false report is prima facie evidence of the accused person's intent to deceive, mislead, or otherwise misinform any person.

(4) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

Section 2. Section 790.164, Florida Statutes, is amended to read:

576-03396-16

790.164 False reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property, or concerning use of firearms in a violent manner; penalty; reward.—

(1) It is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction as defined in s. 790.166, ~~or~~ concerning any act of arson or other violence to property owned by the state or any political subdivision, or concerning the use of firearms in a violent manner against a person or persons. A ~~Any~~ person who violates ~~violating~~ this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Notwithstanding any other law, adjudication of guilt or imposition of sentence for a violation of this section may not be suspended, deferred, or withheld. However, the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(3) Proof that a person accused of violating this section knowingly made a false report is prima facie evidence of the accused person's intent to deceive, mislead, or otherwise misinform any person.

(4)(a) There shall be a $5,000 reward for the giving of information to any law enforcement agency in the state, which information leads to the arrest and conviction of any person

576-03396-16

violating the provisions of this section. Any person claiming such reward shall apply to the law enforcement agency developing the case and be paid by the Department of Law Enforcement from the deficiency fund.

(b) There shall be only one reward given for each case, regardless of how many persons are arrested and convicted in connection with the case and regardless of how many persons submit claims for the reward.

(c) The Department of Law Enforcement shall establish procedures to be used by all reward applicants, and the circuit judge in whose jurisdiction the action occurs shall review all such applications and make final determination as to those applicants entitled to receive an award.

(d) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

Section 3. Section 836.12, Florida Statutes, is created to read:

836.12 Terroristic threats.—

(1) As used in this section, the term:

(a) "Family member of a person" means:

1. An individual related to the person by blood or marriage; or

2. An individual to whom the person stands in loco parentis.

(b) "Law enforcement officer" means:

1. Law enforcement officer as defined in s. 943.10; or

2. Federal law enforcement officer as defined in s. 901.1505.

(2) It is unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

(a) Terror; or

(b) The evacuation of a building, place of assembly, or facility of public transportation.

(3) A person who violates s. 790.163 or s. 790.164 commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

(a) Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;

(b) Involves a threat against a law enforcement officer, a state attorney or assistant state attorney, a firefighter, a judge, or an elected official; or

(c) Involves a threat against a family member of a person identified in paragraph (b).

(4) A person convicted of violating subsection (3) shall, in addition to any other restitution or penalty provided by law, pay restitution for all costs and damages caused by an evacuation resulting from the criminal violation.

Section 4. Paragraphs (e) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, ~~deadly~~ explosive, ~~or~~ weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.

790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more

		specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.

847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,

		(2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a

		specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.

784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, ~~of deadly~~ explosive, weapon of mass destruction, ~~or~~ act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with

		specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300

		or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.

827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 5. For the purpose of incorporating the amendment made by this act to section 790.163, Florida Statutes, in a reference thereto, paragraph (m) of subsection (2) of section 1006.07, Florida Statutes, is reenacted to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the

attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year. Each code shall be organized and written in language that is understandable to students and parents and shall be discussed at the beginning of every school year in student classes, school advisory council meetings, and parent and teacher association or organization meetings. Each code shall be based on the rules governing student conduct and discipline adopted by the district school board and shall be made available in the student handbook or similar publication. Each code shall include, but is not limited to:

(m) Notice that any student who is determined to have made a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity will be expelled, with or without continuing educational services, from the student's regular school for a period of not less than 1 full year and referred for criminal prosecution. District school boards may assign the student to a disciplinary program or second chance school for the purpose of continuing educational services during the period of expulsion. District school superintendents may consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning the student to a

disciplinary program or second chance school if it is determined to be in the best interest of the student and the school system.

Section 6. For the purpose of incorporating the amendment made by this act to section 790.163, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 1006.13, Florida Statutes, is reenacted to read:

1006.13 Policy of zero tolerance for crime and victimization.—

(3) Zero-tolerance policies must require students found to have committed one of the following offenses to be expelled, with or without continuing educational services, from the student's regular school for a period of not less than 1 full year, and to be referred to the criminal justice or juvenile justice system.

(b) Making a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity.

District school boards may assign the student to a disciplinary program for the purpose of continuing educational services during the period of expulsion. District school superintendents may consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning the student to a disciplinary program or second chance school if the request for modification is in writing and it is determined to be in the best interest of the student and the school system. If a student committing any of the offenses in this subsection is a student who has a


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576-03396-16

disability, the district school board shall comply with applicable State Board of Education rules.

Section 7. This act shall take effect October 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 Appropriations

BILL:	CS/SB 436
INTRODUCER:	Criminal Justice Committee; and Senators Simpson and Dean
SUBJECT:	Terroristic Threats
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Fav/CS**
2.	Clodfelter	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 436 creates new criminal offenses relating to terroristic threats. The bill makes it unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing, terror or the evacuation of a building, place of assembly, or facility of public transportation.

Persons violating this offense commit a third degree felony punishable by up to five years imprisonment and a $5,000 fine. Persons commit a second degree felony punishable by up to 15 years imprisonment and a $10,000 fine if occupants of the building, place of assembly, or facility of public transportation are diverted from their normal or customary operations; if the threat is against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or if the threat is against a family member of one of the identified persons.

The bill provides that in addition to any restitution or penalty, persons violating this section shall pay restitution for all costs and damages caused by the evacuation resulting from the criminal conduct.

The Criminal Justice Impact Conference reviewed HB 257, which is similar to this bill, and found that it will have a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds). It appears that the differences between this bill and HB 257 would not change the prison bed impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Threat to Throw, Project, Place or Discharge any Destructive Device

Section 790.162, F.S., makes it a second degree felony[1] if a person threatens to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.

False reports concerning planting bomb, explosive, or weapon of mass destruction

Section 790.163, F.S., makes it a second degree felony if a person makes a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive, or weapon of mass destruction.[2] Persons who are convicted of commission of this offense that resulted in the mobilization of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

False reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property

Section 790.164, F.S., includes the same elements and has the same penalties as s. 790.163, F.S., but adds the additional element that the threat must relate to property owned by the state or any political subdivision. Additionally, this section prohibits threats concerning any act of arson or other violence to property owned by the state or a political subdivision.

Planting of "hoax bomb"

Section 790.165, F.S., makes it a second degree felony if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a "hoax bomb." [3]

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[1] A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. *See,* ss. 775.082 and 775.083, F.S.

[2] "Weapon of mass destruction" is defined in s. 790.166(1)(a), F.S., to mean any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any device or object involving a biological agent or that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life or any biological agent, toxin, vector, or delivery system.

[3] "Hoax bomb" is defined in s. 790.165(1), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain a destructive device or explosive but is in fact inoperable.

Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction

Section 790.166, F.S., makes it a first degree felony[4] if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a weapon of mass destruction.[5] The offense is a second degree felony if the device is a hoax weapon of mass destruction.[6]

False reports of commission of crimes

Section 817.49, F.S., provides that it is a first degree misdemeanor[7] to willfully impart, convey or cause to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under Florida law, knowing the information to be false in that no such crime had actually been committed.

Threats; extortion

Section 836.05, F.S., provides that it is a second degree felony to maliciously, by verbal, written, or printed communication, to injure the person or property of another with intent to compel the threatened person, or any other person, to do any act or refrain from doing any act against his or her will.

Written Threats to Kill or Do Bodily Injury

Section 836.10, F.S., provides that it is a second degree felony to write or compose and send, or procure the sending of, any written communication containing a threat to kill or do bodily injury to the person to whom the letter is sent or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.

False reports to law enforcement authorities

Section 837.05, F.S., provides that it is a first degree misdemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime. The penalty may be enhanced to a third degree felony under certain circumstances.

[4] A first degree felony is punishable by up to 30 years in state prison and a fine of up to $10,000. *See* ss. 775.082 and 775.083, F.S.
[5] For purposes of this section, the term "weapon of mass destruction" does not include self-defense devices that are lawfully possessed or used for self protection.
[6] "Hoax weapon of mass destruction" is defined in s. 790.166(1)(b), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.
[7] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. *See*, ss. 775.082, and 775.083, F.S.

Corruption by threat against public servants

Section 838.021, F.S., makes it a felony to unlawfully harm or threaten to harm any public servant,[8] his or her immediate family, or any other person whose welfare the public servant is interested with the intent or purpose of:

- Influencing the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty[9];
- Causing or inducing the public servant to use or exert, or procure the use of exertion of any influence upon or with any other public servant regarding any act or omission which the defendant believes to be or the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty.[10]

Prosecution under this section does not require allegation or proof that:

- The public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way;
- That the public servant had assumed office;
- That the matter was properly pending before him or her or might by law properly be brought before him or her;
- That the public servant possessed jurisdiction over the matter; or
- That his or her official action was necessary to achieve the person's purpose.[11]

It is a second degree felony if the defendant actually does harm or a third degree felony[12] if the defendant threatens harm.

Breach of the peace; disorderly conduct

Section 877.03, F.S., provides that it is a second degree misdemeanor[13] to "… engage in such conduct as to constitute a breach of the peace or disorderly conduct." The Florida Supreme Court has narrowed the scope of the conduct that is prohibited under this section:

> In light of these considerations, we now limit the application of Section 877.03 so that it shall hereafter only apply either to words which "by their very utterance ... inflict injury or tend to incite an immediate breach of the peace," or to words, known to be false, reporting some physical hazard in circumstances where such a report creates a clear and present danger of bodily harm to others. We construe the statute so that no words except "fighting words" or words like shouts of "fire" in a crowded theatre fall within its proscription, in order to avoid the constitutional

[8] Section 838.021, F.S.
[9] Section 838.021(1)(a), F.S.
[10] Section 838.021(1)(b), F.S.
[11] Section 838.021(2), F.S.
[12] A third degree felony is punishable by up to 5 years in state prison and a fine of up to $5,000. *See,* ss. 775.082 and 775.083, F.S.
[13] A second degree misdemeanor is punishable by up to sixty days in county jail and a $500 fine. *See,* ss. 775.082, and 775.083, F.S.

problem of overbreadth, and "the danger that a citizen will be punished as a criminal for exercising his right of free speech."[14]

Disruption of educational institutions or school boards

Section 877.13, F.S., provides that it is a second degree misdemeanor to knowingly disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property; to knowingly interfere with the attendance of any other school pupil or school employee in a school or classroom; or to engage in any school campus or school function disruption or disturbance which interferes with the educational processes or with the orderly conduct of a school campus, school, or school board function or activity on school board property.

The Pasco Sheriff's Office (Sheriff's Office) asserts that this bill would address issues that existing statutes do not, including clearly prohibiting threats to do harm by use of firearms. According to the Sheriff's Office, the bill's inclusion of all types of threats, application even if a specific victim is not identified in the threat, and inclusion of threats that are made with the intent to cause terror or evacuation of a location, would give law enforcement the necessary tools to bring charges when these types of events take place.

III. Effect of Proposed Changes:

The bill creates s. 836.12, F.S., dealing with terroristic threats, and makes it a third degree felony to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

- Terror; or
- Evacuation of a building, place of assembly, or facility of public transportation.

Persons commit a second degree felony punishable by up to 15 years imprisonment and a $10,000 fine if:

- Occupants of the building, place of assembly, or facility of public transportation are diverted from their normal or customary operations; or
- The threat is against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, elected official, or any of their family members.

The bill requires any person violating the new criminal offense, in addition to any restitution or penalty, to pay restitution for all costs and damages caused by the evacuation resulting from the criminal conduct.

For purposes of the act the bill provides the following definitions:

- "Facility of public transportation" – is defined as a public conveyance and any area, structure, or device which is used to support, guide, control, permit, or facilitate the movement, starting, stopping, takeoff, landing, or servicing of a public conveyance, or the loading or unloading of passengers, freight, or goods and includes a passenger or freight

[14] *State v. Saunders*, 339 So.2d 641, 644 (Fla.1976) (internal citations omitted) (quoting *White v. State*, 330 So.2d 3, 7 (Fla.1976), and *Spears v. State*, 337 So.2d 977, 980 (Fla.1976)).

train, airplane, bus, truck, car, boat, tramway, gondola, lift, elevator, escalator, or other device used for the public carriage of persons or property.

- "Family member of a person" is defined as:
  - An individual related to the person by blood or marriage;
  - An individual living in the person's household or having the same legal residence as the person;
  - An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally known as, an individual whom the person intends to marry; or
  - An individual to whom the person stands in loco parentis.[15]
- "Instructional personnel" is defined in accordance with s. 1012.01, F.S.[16]
- "Law enforcement officer" is defined as a current or former:
  - Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or a county probation officer;
  - Employee or agent of the Department of Corrections who supervises or provides services to inmates;
  - Officer of the Florida Commission on Offender Review;
  - Federal law enforcement officer as defined in s. 901.1505; or
  - Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

The bill has an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[15] "In loco parentis" means "in the place of a parent." MERRIAM-WEBSTER, *In Loco Parentis*, http://www.merriam-webster.com/dictionary/in%20loco%20parentis (last visited February 5, 2016).
[16] "Instructional personnel" means any K-12 staff member whose function includes the provision of direct instructional services to students. The term also includes K-12 personnel whose functions provide direct support in the learning process of students. *See, s.* 1012.01(2), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference reviewed HB 257, which is similar to CS/SB 436, and determined that it will have a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds). It appears that the differences between this bill and HB 257 would not change this determination.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 836.12 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on January 25, 2016:

- Adds and clarifies definitions.
- Revises the prohibition in the bill to apply to threats to commit a crime of violence with intent to cause, or reckless disregard for causing terror or the evacuation of a public building, place of assembly, or facility of public transportation.
- Clarifies the requirement for persons convicted under the bill to pay restitution.
- The effective date is changed from October 1, 2016 to July 1, 2016.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Simpson

591-02535-16 2016436c1

A bill to be entitled

An act relating to terroristic threats; creating s. 836.12, F.S.; providing definitions; providing that a person commits the crime of terroristic threats if he or she threatens to commit a crime of violence under certain circumstances; providing criminal penalties; requiring payment of restitution; providing an effective date.

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

Section 1. Section 836.12, Florida Statutes, is created to read:

836.12 Terroristic threats.—

(1) As used in this section, the term:

(a) "Facility of public transportation" means a public conveyance and any area, structure, or device which is used to support, guide, control, permit, or facilitate the movement, starting, stopping, takeoff, landing, or servicing of a public conveyance, or the loading or unloading of passengers, freight, or goods. For purposes of this paragraph, the term "public conveyance" includes a passenger or freight train, airplane, bus, truck, car, boat, tramway, gondola, lift, elevator, escalator, or other device used for the public carriage of persons or property.

(b) "Family member of a person" means:

1. An individual related to the person by blood or marriage;

2. An individual living in the person's household or having the same legal residence as the person;

3. An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally

591-02535-16 2016436c1

known as, an individual whom the person intends to marry; or

4. An individual to whom the person stands in loco parentis.

(c) "Instructional personnel" has the same meaning as provided in s. 1012.01.

(d) "Law enforcement officer" means a current or former:

1. Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or county probation officer;

2. Employee or agent of the Department of Corrections who supervises or provides services to inmates;

3. Officer of the Florida Commission on Offender Review;

4. Federal law enforcement officer as defined in s. 901.1505; or

5. Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

(2) It is unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

(a) Terror; or

(b) The evacuation of a building, place of assembly, or facility of public transportation.

(3) Except as provided in subsection (4), a person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who violates subsection (2) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

(a) Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;

(b) Involves a threat against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or

(c) Involves a threat against a family member of a person identified in paragraph (b).

(5) A person convicted of violating subsection (2) shall, in addition to any other restitution or penalty provided by law, pay restitution for all costs and damages caused by an evacuation resulting from the criminal conduct.

Section 2. This act shall take effect July 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 Appropriations

BILL:	SB 442
INTRODUCER:	Senators Flores and Garcia
SUBJECT:	Educational Facilities
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Scott	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 442 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 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.

Specifically, the bill authorizes implementation of the following exceptions to the SREF:

- Interior nonload-bearing walls.
- Walkways, roadways, driveways, and parking areas.
- Standards for relocatables used as classroom space.
- Site lighting.

The bill has no impact on state funds. District school boards that adopt the authorized exceptions may achieve cost savings.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

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.[1] The State Fire Marshal adopts standards for public school fire safety within the Florida Fire Prevention Code (FFPC).[2]

The construction of public educational facilities[3] and ancillary plants by a district school board must conform to the FBC, FFPC, and the Florida Accessibility Code for Building Construction[4] (FACBC).[5] Collectively, the FBC, FFPC, and FACBC form the uniform building code for public educational facilities construction and ensure that such facilities are a safe, secure, sanitary, and accessible learning environment for all students, and that the structures will perform efficiently over their expected life cycles.[6] The requirements preempt local codes and local amendments to the FBC.[7]

The SREF specifies standards including, but not limited to:[8]

- Interior walls;[9]
- Walks, roads, drives, and parking areas;[10]
- Covered walks;[11] and
- Site lighting.[12]

[1] Sections 553.73 and 1013.37(1), F.S.; Rule 6A-2.0010, F.A.C.; Section 423, FBC. The 2014 *State Requirements for Educational Facilities* (effective Nov. 4, 2014) are *available at* http://www.fldoe.org/core/fileparse.php/7738/urlt/srefrule14.pdf.

[2] Sections 381.006(16), 1013.03(6), and 1013.37(1) and (4), F.S.; Section 443, FBC.

[3] "Educational facilities" is defined as the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards. Section 1013.01(6), F.S.

[4] The federal Americans with Disabilities Act Standards for Accessible Design, and related regulations in 28 C.F.R. parts 35 and 36 and 49 C.F.R. part 37, are adopted by the Florida Building Commission. Sections 553.503 and 553.73(1)(b), F.S.

[5] The ancillary plants are exempt from other state building codes; county, municipal, or other local amendments to the FBC and local amendments to the FFPC; building permits, and assessments of fees for building permits; ordinances; road closures; and impact fees or service availability fees. Section 1013.371(1)(a), F.S.

[6] Florida Department of Education, *2016 Agency Legislative Bill Analysis* (Oct. 12, 2015), at 2 (on file with the staff of the Senate Committee on Education Pre-K – 12).

[7] The enforcement of construction regulations governing public school districts is conducted by personnel and contract providers who are certified to perform plan reviews and inspections. Section 553.80(1)(e) and (6), F.S.

[8] Section 423 of the FBC contains the State Requirements for Educational Facilities (SREF). However, the Florida Building Code has been redrafted and section 423 will be renumbered as section 453. *The Florida Building Code, Draft Building Chapters*, 5th Edition (2014) is *available at* http://ecodes.biz/ecodes_support/free_resources/14FloridaDraft/Building/14FL_Building_Draft.html (last visited January 23, 2016).

[9] Interior nonload-bearing wood studs or partitions may not be used in permanent educational and auxiliary facilities or relocatable buildings. Section 423.8.3.1.1, FBC.

[10] Walks, roads, drives, and parking areas on educational and ancillary sites must be paved. Roads, drives, and parking areas shall be in compliance with Department of Transportation (DOT) road specifications and striped in compliance with DOT paint specifications. All paved areas must have positive drainage. Section 423.10.2, FBC.

[11] All buildings in K-12 educational facilities must be connected by paved walks and accessible under continuous roof cover. New relocatable classroom buildings must be connected to permanent buildings by paved covered walks where applicable. Section 423.10.2.1, FBC.

[12] Design, construction, and installation of exterior security lighting for educational and ancillary facilities must be provided for auto, bus, and service drives and loading areas; parking areas; building perimeter; and covered and connector walks between buildings and between buildings and parking. Section 423.10.3, FBC.

Proposed Construction, Renovation, or Remodeling Plans

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.[13] In reviewing the plans, the district school board must consider, among other things:[14]

- 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.
- 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.[15] 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 plans[16] to the county, municipality, or independent special fire control district providing fire protection services to the facility for review at no charge.[17] 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.[18]

Waivers or Variances

The State 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.[19] 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.[20]

[13] Section 1013.37(2)(a) and (b), F.S.
[14] Section 1013.37(2)(b), F.S.
[15] Sections 1013.37(2), 1013.371(1)(c), and 1013.38(4)(a), F.S.
[16] 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. Sections 1013.371(1)(a) and 1013.38(1)(b), F.S.
[17] Section 1013.38(1)(a) and (b), F.S.
[18] Sections 1013.37(2)(a) and 1013.38(4)(a), F.S.
[19] 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.
[20] Section 553.775(1), F.S.

The Florida Building Commission (commission) is not authorized to accept a petition for and may not grant any waiver[21] or variance[22] from the requirements of the FBC.[23] However, the commission is required to adopt 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.[24]

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.[25]

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.[26]

III. Effect of Proposed Changes:

This 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 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:

[21] "Waiver" means a decision by an agency to apply all or part of a rule to a person who is subject to the rule. Any waiver must conform to the standards for waivers outlined in the Administrative Procedure Act and in the uniform rulemaking procedures. Section 120.52(22), F.S. (definition of "waiver"); Section 120.54, F.S. (rulemaking procedure).
[22] "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance must conform to the standards for variances outlined in the Administrative Procedure Act and in the uniform rulemaking procedures. Section 120.52(21), F.S. (definition of "variance"); Section 120.54, F.S. (rulemaking procedure).
[23] Sections 120.80(16)(a) and (b) and 553.512(1), F.S.
[24] 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. Section 553.513, F.S.
[25] Section 553.512(1), F.S. Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area. 28 C.F.R. s. 36.403(f)(1).
[26] Section 1013.371(2), F.S.

- 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 footcandle.[27]

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
- Demonstrates that implementation of the exception will not compromise 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.

The bill provides an effective date of July 1, 2016.

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.

[27] A "footcandle" is defined as a unit of illuminance on a surface that is everywhere one foot from a uniform point source of light of one candle and equal to one lumen per square foot. *See* Merriam-Webster Dictionary *available at* http://www.merriam-webster.com/dictionary/foot-candle (last visited January 23, 2016).

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 442 has no impact on state funds. District school boards that adopt the authorized exceptions may achieve cost savings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 1013.385 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Flores

37-00516-16 2016442__

A bill to be entitled

An act relating to educational facilities; 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.

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

Section 1. Section 1013.385, Florida Statutes, is created to read:

1013.385 School district construction flexibility.—

(1) A district school board may, with a supermajority vote at a public meeting that begins no earlier than 5 p.m., adopt a resolution to implement one or more of the exceptions to the 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 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

37-00516-16 2016442__

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 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 that:

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 when 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.

Section 2. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 524 (314320)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Higher Education Committee; and Senator Gaetz
SUBJECT:	State University System Performance-based Incentives
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 524 incorporates into the Florida Statutes on July 1, 2016, and modifies public postsecondary education performance funding and educator liability insurance program provisions affected by the 2015-2016 General Appropriations Act (GAA) and Implementing Bill by:

- Requiring the Board of Governors (BOG) to adopt a regulation implementing the State University System (SUS) Performance-Based Incentive Program. The program must include wage thresholds that reflect the added value of a baccalaureate degree and minimum performance funding eligibility thresholds that, if not met, will make an institution ineligible for the state's investment in performance funding.
- Requiring the State Board of Education (SBE or state board) to establish, by rule, performance-based metrics for the Florida College System (FCS) and minimum performance funding eligibility thresholds that, if any FCS institution does not meet, will make the institution ineligible for a share of the state's investment in performance funding. Likewise, any FCS institution that fails to meet the threshold for the institutional investment shall have a portion of its institutional investment withheld.
- Eliminating the July 1, 2016, expiration date of the educator liability insurance program that provides a minimum of $2 million in liability coverage for all full-time public school instructional personnel.

During the 2015A Special Session, the Legislature adopted the substance of PCS/CS/SB 524, related to the SUS Performance-Based Incentive, the FCS Performance-Based Incentive, and the educator liability insurance program, in ch. 2015-222, L.O.F., the implementing bill for the 2015-2016 General Appropriations Act (GAA). These provisions will expire on July 1, 2016, unless the Legislature acts to codify the policy beyond the 2015-2016 fiscal year. PCS/CS/SB 524 protects these policies from repeal by reenacting modified provisions and providing an effective date of July 1, 2016.

The bill also amends the preeminent state research universities program, to require the BOG to designate each state university that meets at least six of the 12 academic and research excellence standards identified in law as an "emerging preeminent state research university." The bill modifies the academic and research excellence standards of the preeminent state research universities program and establishes funding parameters for universities designated as "preeminent" or "emerging preeminent."

The bill has no impact on state funds. The amount of performance funding available to SUS and FCS institutions is determined annually in the GAA. In the 2015-2016 fiscal year, the Legislature appropriated $150 million for the state's investment in the SUS Performance-Based Incentive and $20 million for the state's investment in the FCS Performance-Based Incentive. Likewise, funding for the preeminent state research universities program, as well as the educator liability insurance program, are contingent upon funding in the GAA. In the 2015-2016 fiscal year, the Legislature appropriated $10 million for the preeminent state research universities program and $1.2 million for the educator liability insurance program.

The bill is effective July 1, 2016.

II. Present Situation:

Performance-Based Funding

The Legislature has established performance-based funding models in the recent years to evaluate the performance of Florida's public educational institutions, such as state universities and FCS institutions, based on identified performance metrics.

State University System

In 2014, the Legislature required that performance funding be allocated based on the BOG's Performance Funding Model approved on January 16, 2014.[1] The BOG's Performance Funding Model contained 10 performance metrics that evaluate the state universities on the following:[2]

- Percent of bachelor's degree graduates employed and/or continuing their education;
- Average wages of employed baccalaureate graduates;

[1] Specific Appropriation 143, ch. 2014-51, L.O.F.
[2] Florida Board of Governors, *Meeting Minutes* (January 16, 2014), *available at* http://www.flbog.edu/documents_meetings/0187_0790_5874_10.2.2%20BOG%202014_01_16_Board_of_Governors_minutes.pdf; *see also* Florida Board of Governors, *Performance Funding Model Overview*, *available at* http://www.flbog.edu/about/budget/docs/performance_funding/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-April2015.pdf.

- Cost per undergraduate degree;
- Six-year graduation rate (full-time and part-time first time in college (FTIC));
- Academic Progress Rate (second year retention with grade point average above 2.0);
- Bachelor's degrees awarded in areas of strategic emphasis (including Science, Technology, Engineering, and Math (STEM) education);
- University access rate (percent of undergraduates with a Pell Grant);
- Graduate degrees awarded in areas of strategic emphasis (including STEM);
- Two additional metrics, one chosen by each of the following:
  - Board of Governors and
  - University Board of Trustees

The performance of state universities are evaluated based on the benchmarks adopted by the BOG for achievement of excellence or improvement in these specified metrics. The 2014-2015 GAA appropriated $200 million for State University Performance Based Incentives, which included $100 million in new funding and $100 million redistributed from a proportionate share of each state university's base funds.[3] A state university that qualified for the new funding, also received its full base funding.[4] A state university that failed to meet the minimum performance threshold established by the BOG had a portion of its base funding withheld and was required to submit a performance improvement plan (plan) to the BOG.[5] The board was required to approve the plan and monitor the university's progress on implementing the performance measures specified in the plan.[6] Full base funding for a state university was restored upon the board's approval of the plan and progress monitoring reports.[7] Full base funding was not restored for a state university that fails to make satisfactory progress on meeting its performance improvement plan expectations.[8]

During the 2015A Special Session, the Legislature codified the SUS Performance-Based Incentive, which is based on indicators of institutional attainment of performance metrics adopted by the BOG.[9] These performance metrics include graduation rates, retention rates, postgraduation education rates, degree production, affordability, postgraduation employment and salaries, access, and other metrics approved by the board in a noticed meeting.[10] The Legislature instructed the BOG to adopt benchmarks to evaluate each state university's performance on the metrics to determine a state university's achievement of institutional excellence or need for improvement.[11] The 2015-2016 GAA appropriated $400 million for the SUS Performance-Based Incentive, which included $150 million for the state investment and $250 million for the institutional investment.[12]

[3] Specific Appropriation 143, ch. 2014-51, L.O.F.
[4] *Id*.
[5] *Id*.
[6] Specific Appropriation 143, ch. 2014-51, L.O.F.
[7] *Id*.
[8] *Id*.
[9] Section 1001.92, F.S., *as created by* s. 14, ch. 2015-222, L.O.F.
[10] *Id*.
[11] *Id*.
[12] Specific Appropriation 138, ch. 2015-232, L.O.F.

Florida College System

In the 2015-2016 Implementing Bill, the Legislature established the FCS Performance Based Incentive, which is based on indicators of institutional attainment of performance metrics adopted by the state board. These performance metrics include metrics that measure retention; program completion and graduation rates; job placement; and post-graduation employment, salaries, or further education. FCS institutions were evaluated for their performance, based on benchmarks adopted by the state board for achievement of excellence or improvement on the metrics. In the 2015-2016 GAA, the Legislature appropriated $40 million for FCS performance, including $20 million in new funding and $20 million redistributed from a proportionate share of each institution's base funds.[13]

Educator Liability Insurance Program

The 2015-2016 Implementing Bill amended s. 1012.75, F.S., to require the Department of Education (department) to administer a liability insurance program to protect public school educators from liability for claims arising from incidents occurring while performing job responsibilities.[14] The program must provide coverage amounting to $2 million to all full-time instructional personnel.[15] Part-time instructional personnel, administrative personnel, and student teachers participating in clinical field experience through a state-approved teacher preparation program may opt to receive liability coverage, at cost.[16]

The law required the department, by August 1, 2015, to notify eligible personnel of the pending procurement for liability coverage. In addition, the law required each school district, by September 1, 2015, to notify eligible personnel of the liability coverage using a postcard which included:

- The amount of the coverage;
- A general description of the nature of the coverage; and
- The contact information for coverage and claims questions.[17]

The law required each district school board to certify to the department, by September 15, 2015, that the district had provided the notification to the eligible personnel.[18]

The department must 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." [19]

These amendments to the educator liability insurance program will expire on July 1, 2016.

[13] Section 15, ch. 2015-222, L.O.F.
[14] See s. 1012.75(3), F.S., as amended by s. 10, ch. 2015-222, L.O.F.
[15] Section 1012.75(3)(a), F.S.
[16] *Id.*
[17] Section 1012.75(3)(b), F.S.
[18] *Id.*
[19] Section 1012.75(3)(c), F.S

Preeminent State Research Universities

The preeminent state research university program is a collaborative partnership between the BOG and the Legislature to elevate the academic and research preeminence of Florida's highest performing state research universities.[20] A state research university that meets at least 11 of the 12 academic and research excellence standards specified in law is designated as a preeminent state research university.[21]

The academic and research excellence standards are:[22]

- An average weighted grade point average of 4.0 or higher on a 4.0 scale and an average SAT score of 1800 or higher for fall semester incoming freshmen, as reported annually.
- A top-50 ranking on at least two well-known and highly respected national public university rankings, reflecting national preeminence, using most recent rankings.
- A freshman retention rate of 90 percent or higher for full-time, first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System (IPEDS).
- A 6-year graduation rate of 70 percent or higher for full-time, first-time-in-college students, as reported annually to the IPEDS.
- Six or more faculty members at the state university who are members of a national academy, as reported by the Center for Measuring University Performance in the Top American Research Universities (TARU) annual report.
- Total annual research expenditures, including federal research expenditures, of $200 million or more, as reported annually by the National Science Foundation (NSF).
- Total annual research expenditures in diversified nonmedical sciences of $150 million or more, based on data reported annually by the NSF.
- A top-100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.
- One hundred or more total patents awarded by the United States Patent and Trademark Office for the most recent 3-year period.
- Four hundred or more doctoral degrees awarded annually, as reported in the BOG Annual Accountability Report.
- Two hundred or more postdoctoral appointees annually, as reported in the TARU annual report.
- An endowment of $500 million or more, as reported in the BOG Annual Accountability Report.

A preeminent state research university receives $5 million in recurring funds annually, subject to appropriation in the GAA.[23] Currently, only the Florida State University and University of Florida meet the standards for preeminent state research university designation and are Florida's only two preeminent state research universities.[24]

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[20] Section 1001.7065(1), F.S.
[21] *Id.* at (3).
[22] *Id.* at (2).
[23] Section 1001.7065, F.S.
[24] Florida Board of Governors, Strategic Planning Committee, Agenda Item 7, *Preeminent State Research University Benchmark Plans* (November 20, 2013) *available at* http://www.flbog.edu/documents_meetings/0184_0752_5480_399%20SPC%20Packet.pdf.

III. Effect of Proposed Changes:

This bill re-enacts and amends the FCS Performance-Based Incentive and the SUS Performance-Based Incentive, re-enacts 2015A Special Session amendments to the educator liability insurance program, and amends the preeminent state research universities program.

Performance-Based Funding

State University System

The bill re-enacts and modifies the SUS Performance-Based Incentive to:

- Require the performance-based metrics to include wage thresholds that reflect the added value of a baccalaureate degree.
- Require the BOG to establish minimum performance funding eligibility thresholds for the state's investment and the institutional investment.
- Prohibit a state university that fails to meet the state's investment performance funding threshold from eligibility to receive a share of the state's investment performance funding.

Additionally, the bill requires the BOG to adopt a regulation to implement the SUS Performance-Based Incentive statutory provisions.

Florida College System

The bill re-enacts the FCS Performance-Based Incentive and requires the state board to adopt rules for its implementation. Specifically, the bill:

- Modifies the performance-based metrics to include metrics that measure: retention; program completion and graduation rates; postgraduation employment, salaries, and continuing education for workforce education and baccalaureate degree programs, with wage thresholds that reflect the added value of the certificate or degree; and outcome measures appropriate for associate degree recipients.
- Requires the state board to establish minimum performance funding eligibility thresholds for both the state's investment and the institutional investment.
- Specifies that any institution that does not meet the SBE's performance threshold for the state's investment is not eligible for a share of the state's investment in performance funding.
- Specifies that each institution's share of performance funding shall be calculated based on its relative performance on the established metrics, in conjunction with the institution's size and scope.
- Requires that any institution that fails to meet the SBE's performance threshold for the institutional investment shall have a portion of its institutional investment withheld and must submit an improvement plan to the state board which specifies activities and strategies for improving the institution's performance.
- Requires the SBE, by October 1 of each year, to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the previous fiscal year's performance funding allocation which must reflect the rankings and award distributions.

Educator Liability Insurance Program

The bill re-enacts amendments made to the educator liability insurance program during the 2015A Special Session by eliminating the July 1, 2016, statutory expiration date. The program requires the department and each school district to provide annual notification of the $2 million insurance coverage to eligible personnel. District school boards must annually certify to the department that the notification has been provided. In addition, the bill requires a district school board providing clinical field experience to students in teacher preparation programs to notify the student electronically or in writing of the availability of educator liability insurance. Postsecondary educational institutions and district school boards are prohibited from requiring a student in a 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.

During the 2015A Special Session, the Legislature adopted the substance of PCS/CS/SB 524 related to the SUS Performance-Based Incentive, the FCS Performance-Based Incentive, and the educator liability insurance program in ch. 2015-222, L.O.F., the implementing bill for the 2015-2016 GAA. These provisions will expire on July 1, 2016, unless the Legislature acts to codify the policy beyond the 2015-2016 fiscal year. PCS/CS/SB 524 protects these polices from repeal by reenacting modified provisions and providing an effective date of July 1, 2016.

Preeminent State Research Universities

The bill modifies the academic and research excellence standards of the preeminent state research universities program by:

- Aligning the required average SAT score for incoming freshman with recent changes to the SAT examination scoring rubric;
- Specifying that the U.S. News and World Report rankings is one of the rankings that should be considered for the Top-50 Ranking requirement;
- Including the official membership directories maintained by each national academy (in addition to the Top American Research Universities (TARU) annual report) as a source for verification of recognition of faculty members in a national academy; and
- Including professional degrees awarded in medical and healthcare disciplines in the calculation of the number of doctoral degrees awarded annually.

Currently, each state university that meets at least 11 of the 12 academic and research excellence standards above is designated as a "preeminent state research university." The bill requires the BOG to also designate each state university that meets at least six of the 12 academic and research excellence standards as an "emerging preeminent state research university." However, the BOG may temporarily suspend or rescind the "preeminent" or "emerging preeminent" designation upon petition from a designated institution. The BOG may also revoke either designation of an institution with concurrence of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill requires a state university that is designated as an "emerging preeminent state research university" to submit to the BOG a 5-year benchmark plan, with target rankings on key performance metrics for national excellence. Once approved by the BOG and upon the university

meeting the benchmark goals annually, the BOG shall award the university its proportional share of any funds provided annually in the GAA to support the program.

The bill repeals the preeminent state research university enhancement initiative. This initiative authorizes additional funding for preeminent state research universities for the purpose of recruiting National Academy Members, providing a master's degree in cloud virtualization, and instituting an enterprise in resident program, if funding was provided in the GAA. The bill also repeals the preeminent state research university special course requirement authority. This authority allows preeminent state research universities to require incoming first time in college students to take a 9 to 12 credit set of unique courses specifically determined by the university.

Unless otherwise specified in the GAA, funding increases appropriated to support the program must be distributed equally to each designated "preeminent state research university" and each university designated as an "emerging preeminent state research university" shall receive an amount equal to one-half of the total increased amount awarded to each designated "preeminent state research university."

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:

PCS/CS/SB 524 has no impact on state funds. All programs in the bill are contingent upon funding in the GAA. In the 2015-2016 fiscal year, the Legislature appropriated $150 million for the state's investment in the SUS Performance-Based Incentive, $20 million for the state's investment in the FCS Performance-Based Incentive, $10 million for the preeminent state research universities program, and $1.2 million for the educator liability insurance program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.7065, 1001.92, 1012.39, and 1012.75.

This bill creates section 1001.66 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/CS by Appropriations Subcommittee on Education on December 3, 2015:
The committee substitute:

- Maintains provisions regarding state university performance funding.
- Re-enacts and amends the FCS Performance-Based Incentive.
- Modifies criteria for the preeminent state research university designation.
- Establishes an "emerging preeminent state research university" designation and establishes eligibility criteria.
- Re-enacts 2015A Special Session amendments to the educator liability insurance program.

CS by Higher Education on November 17, 2015:
The committee substitute restores current law regarding limiting to one fiscal year, the ability of state universities to submit performance improvement plans to the Florida Board of Governors of the State University System of Florida to receive institutional investment performance funding.

B. Amendments:

None.

741272

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsection (27) of section 1001.42, Florida Statutes, is redesignated as subsection (28), and a new subsection (27) is added to that section, 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:

741272

(27) VISITATION OF SCHOOLS.—Visit the schools, observe the management and instruction, give suggestions for improvement, and advise citizens with the view of promoting interest in education and improving the school.

Section 2. Section 1001.66, Florida Statutes, is created to read:

1001.66 Florida College System Performance-Based Incentive.—

(1) A Florida College System Performance-Based Incentive shall be awarded to Florida College System institutions using performance-based metrics adopted by the State Board of Education. The performance-based metrics must include retention rates; program completion and graduation rates; postgraduation employment, salaries, and continuing education for workforce education and baccalaureate programs, with wage thresholds that reflect the added value of the certificate or degree; and outcome measures appropriate for associate of arts degree recipients. The state board shall adopt benchmarks to evaluate each institution's performance on the metrics to measure the institution's achievement of institutional excellence or need for improvement and minimum requirements for eligibility to receive performance funding.

(2) Each fiscal year, the amount of funds available for allocation to the Florida College System institutions based on the performance-based funding model shall consist of the state's investment in performance funding plus institutional investments consisting of funds to be redistributed from the base funding of the Florida College System Program Fund as determined in the General Appropriations Act. The State Board of Education shall

741272

establish minimum performance funding eligibility thresholds for the state's investment and the institutional investments. An institution that fails to meet the minimum state investment performance funding eligibility threshold is ineligible for a share of the state's investment in performance funding. The institutional investment shall be restored for all institutions eligible for the state's investment under the performance-based funding model.

(3)(a) Each Florida College System institution's share of the performance funding shall be calculated based on its relative performance on the established metrics in conjunction with the institutional size and scope.

(b) A Florida College System institution that fails to meet the State Board of Education's minimum institutional investment performance funding eligibility threshold shall have a portion of its institutional investment withheld by the state board and must submit an improvement plan to the state board which specifies the activities and strategies for improving the institution's performance. The state board must review and approve the improvement plan and, if the plan is approved, must monitor the institution's progress in implementing the activities and strategies specified in the improvement plan. The institution shall submit monitoring reports to the state board by December 31 and May 31 of each year in which an improvement plan is in place. The ability of an institution to submit an improvement plan to the state board is limited to 1 fiscal year.

(c) The Commissioner of Education shall withhold disbursement of the institutional investment until the monitoring report is approved by the State Board of Education. A

741272

Florida College System institution determined by the state board to be making satisfactory progress on implementing the improvement plan shall receive no more than one-half of the withheld institutional investment in January and the balance of the withheld institutional investment in June. An institution that fails to make satisfactory progress may not have its full institutional investment restored. Any institutional investment funds that are not restored shall be redistributed in accordance with the state board's performance-based metrics.

(4) Distributions of performance funding, as provided in this section, shall be made to each of the Florida College System institutions listed in the Florida Colleges category in the General Appropriations Act.

(5) By October 1 of each year, the State Board of Education shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the previous fiscal year's performance funding allocation, which must reflect the rankings and award distributions.

(6) The State Board of Education shall adopt rules to administer this section.

Section 3. Section 1001.67, Florida Statutes, is created to read:

1001.67 Distinguished Florida College System Program.—A collaborative partnership is established between the State Board of Education and the Legislature to recognize the excellence of Florida's highest-performing Florida College system institutions.

(1) EXCELLENCE STANDARDS.—The following excellence standards are established for the program:


741272

(a) A 150 percent-of-normal-time completion rate of 50 percent or higher, as calculated by the Division of Florida Colleges.

(b) A 150 percent-of-normal-time completion rate for Pell Grant recipients of 40 percent or higher, as calculated by the Division of Florida Colleges.

(c) A retention rate of 70 percent or higher, as calculated by the Division of Florida Colleges.

(d) A continuing education, or transfer, rate of 72 percent or higher for students graduating with an associate of arts degree, as reported by the Florida Education and Training Placement Information Program (FETPIP).

(e) A licensure passage rate on the National Council Licensure Examination for Registered Nurses (NCLEX-RN) of 90 percent or higher for first-time exam takers, as reported by the Board of Nursing.

(f) A job placement or continuing education rate of 88 percent or higher for workforce programs, as reported by FETPIP.

(g) A time-to-degree for students graduating with an associate of arts degree of 2.25 years or less for first-time-in-college students with accelerated college credits, as reported by the Southern Regional Education Board.

(2) DISTINGUISHED COLLEGE DESIGNATION.—The State Board of Education shall designate each Florida College System institution that meets five of the seven standards identified in subsection (1) as a distinguished college.

(3) DISTINGUISHED COLLEGE SUPPORT.—A Florida College System institution designated as a distinguished college by the State Board of Education is eligible for funding as specified in the


741272

General Appropriations Act.

Section 4. Subsection (1) of section 1001.7065, Florida Statutes, is reenacted, and subsections (2), (3), and (5) through (9) of that section are amended, to read:

1001.7065 Preeminent state research universities program.—

(1) STATE UNIVERSITY SYSTEM SHARED GOVERNANCE COLLABORATION.—A collaborative partnership is established between the Board of Governors and the Legislature to elevate the academic and research preeminence of Florida's highest-performing state research universities in accordance with this section. The partnership stems from the State University System Governance Agreement executed on March 24, 2010, wherein the Board of Governors and leaders of the Legislature agreed to a framework for the collaborative exercise of their joint authority and shared responsibility for the State University System. The governance agreement confirmed the commitment of the Board of Governors and the Legislature to continue collaboration on accountability measures, the use of data, and recommendations derived from such data.

(2) ACADEMIC AND RESEARCH EXCELLENCE STANDARDS.—~~Effective July 1, 2013,~~ The following academic and research excellence standards are established for the preeminent state research universities program:

(a) An average weighted grade point average of 4.0 or higher on a 4.0 scale and an average SAT score of 1800 or higher on a 2400-point scale or 1200 or higher on a 1600-point scale for fall semester incoming freshmen, as reported annually.

(b) A top-50 ranking on at least two well-known and highly respected national public university rankings, including, but

741272

not limited to, the U.S. News and World Report rankings, reflecting national preeminence, using most recent rankings.

(c) A freshman retention rate of 90 percent or higher for full-time, first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System (IPEDS).

(d) A 6-year graduation rate of 70 percent or higher for full-time, first-time-in-college students, as reported annually to the IPEDS.

(e) Six or more faculty members at the state university who are members of a national academy, as reported by the Center for Measuring University Performance in the Top American Research Universities (TARU) annual report or the official membership directories maintained by each national academy.

(f) Total annual research expenditures, including federal research expenditures, of $200 million or more, as reported annually by the National Science Foundation (NSF).

(g) Total annual research expenditures in diversified nonmedical sciences of $150 million or more, based on data reported annually by the NSF.

(h) A top-100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.

(i) One hundred or more total patents awarded by the United States Patent and Trademark Office for the most recent 3-year period.

(j) Four hundred or more doctoral degrees awarded annually, including professional doctoral degrees awarded in medical and health care disciplines, as reported in the Board of Governors Annual Accountability Report.

741272

(k) Two hundred or more postdoctoral appointees annually, as reported in the TARU annual report.

(l) An endowment of $500 million or more, as reported in the Board of Governors Annual Accountability Report.

(3) PREEMINENT STATE RESEARCH UNIVERSITY DESIGNATION.—

(a) The Board of Governors shall designate each state ~~research~~ university that annually meets at least 11 of the 12 academic and research excellence standards identified in subsection (2) as a "preeminent state research university." ~~preeminent state research university.~~

(b) The Board of Governors shall designate each state university that annually meets at least 6 of the 12 academic and research excellence standards identified in subsection (2) as an "emerging preeminent state research university."

(5) PREEMINENT STATE RESEARCH UNIVERSITIES PROGRAM ~~UNIVERSITY~~ SUPPORT.—

(a) A state ~~research~~ university that is designated as a preeminent state research university~~, as of July 1, 2013, meets all 12 of the academic and research excellence standards identified in subsection (2), as verified by the Board of Governors,~~ shall submit to the Board of Governors a 5-year benchmark plan with target rankings on key performance metrics for national excellence. Upon approval by the Board of Governors, and upon the university's meeting the benchmark plan goals annually, the Board of Governors shall award the university its proportionate share of any funds provided annually to support the program created under this section ~~an amount specified in the General Appropriations Act to be provided annually throughout the 5-year period. Funding for this~~


741272

~~purpose is contingent upon specific appropriation in the General Appropriations Act~~.

(b) A state university designated as an emerging preeminent state research university shall submit to the Board of Governors a 5-year benchmark plan with target rankings on key performance metrics for national excellence. Upon approval by the Board of Governors, and upon the university's meeting the benchmark plan goals annually, the Board of Governors shall award the university its proportionate share of any funds provided annually to support the program created under this section.

(c) The award of funds under this subsection is contingent upon funding provided in the General Appropriations Act to support the preeminent state research universities program created under this section. Funding increases appropriated beyond the amounts funded in the previous fiscal year shall be distributed as follows:

1. Each designated preeminent state research university that meets the criteria in paragraph (a) shall receive an equal amount of funding.

2. Each designated emerging preeminent state research university that meets the criteria in paragraph (b) shall receive an amount of funding that is equal to one-half of the total increased amount awarded to each designated preeminent state research university.

~~(6) PREEMINENT STATE RESEARCH UNIVERSITY ENHANCEMENT INITIATIVE.—A state research university that, as of July 1, 2013, meets 11 of the 12 academic and research excellence standards identified in subsection (2), as verified by the Board of Governors, shall submit to the Board of Governors a 5-year~~

741272

~~benchmark plan with target rankings on key performance metrics for national excellence. Upon the university's meeting the benchmark plan goals annually, the Board of Governors shall award the university an amount specified in the General Appropriations Act to be provided annually throughout the 5-year period for the purpose of recruiting National Academy Members, expediting the provision of a master's degree in cloud virtualization, and instituting an entrepreneurs-in-residence program throughout its campus. Funding for this purpose is contingent upon specific appropriation in the General Appropriations Act.~~

~~(7) PREEMINENT STATE RESEARCH UNIVERSITY SPECIAL COURSE REQUIREMENT AUTHORITY.—In order to provide a jointly shared educational experience, a university that is designated a preeminent state research university may require its incoming first-time-in-college students to take a 9-to-12-credit set of unique courses specifically determined by the university and published on the university's website. The university may stipulate that credit for such courses may not be earned through any acceleration mechanism pursuant to s. 1007.27 or s. 1007.271 or any other transfer credit. All accelerated credits earned up to the limits specified in ss. 1007.27 and 1007.271 shall be applied toward graduation at the student's request.~~

(6) ~~(8)~~ PREEMINENT STATE RESEARCH UNIVERSITY FLEXIBILITY AUTHORITY.—The Board of Governors is encouraged to identify and grant all reasonable, feasible authority and flexibility to ensure that a designated preeminent state research university is free from unnecessary restrictions.

(7) ~~(9)~~ PROGRAMS OF EXCELLENCE THROUGHOUT THE STATE


741272

UNIVERSITY SYSTEM.—The Board of Governors is encouraged to establish standards and measures whereby individual programs in state universities that objectively reflect national excellence can be identified and make recommendations to the Legislature as to how any such programs could be enhanced and promoted.

Section 5. Section 1001.92, Florida Statutes, is amended to read:

1001.92 State University System Performance-Based Incentive.—

(1) A State University System Performance-Based Incentive shall be awarded to state universities using performance-based metrics adopted by the Board of Governors of the State University System. The performance-based metrics must include graduation rates;~~,~~ retention rates;~~,~~ postgraduation education rates;~~,~~ degree production;~~,~~ affordability;~~,~~ postgraduation employment and salaries, including wage thresholds that reflect the added value of a baccalaureate degree; access;~~,~~ and other metrics approved by the board in a formally noticed meeting. The board shall adopt benchmarks to evaluate each state university's performance on the metrics to measure the state university's achievement of institutional excellence or need for improvement and minimum requirements for eligibility to receive performance funding.

(2) Each fiscal year, the amount of funds available for allocation to the state universities based on the performance-based funding model ~~metrics~~ shall consist of the state's investment in ~~appropriation for~~ performance funding~~, including increases in base funding~~ plus institutional investments consisting of funds deducted from the base funding of each state


741272

university in the State University System~~,~~ in an amount provided in the General Appropriations Act. The Board of Governors shall establish minimum performance funding eligibility thresholds for the state's investment and the institutional investments. A state university that fails to meet the minimum state investment performance funding eligibility threshold is ineligible for a share of the state's investment in performance funding. The institutional investment shall be restored for each institution eligible for the state's investment under the performance-based funding model ~~metrics~~.

(3)(a) A state university that fails to meet the Board of Governors' minimum institutional investment performance funding eligibility threshold shall have ~~a portion of~~ its institutional investment withheld by the board and must submit an improvement plan to the board that specifies the activities and strategies for improving the state university's performance. The board must review and approve the improvement plan and, if the plan is approved, must monitor the state university's progress in implementing the activities and strategies specified in the improvement plan. The state university shall submit monitoring reports to the board by December 31 and May 31 of each year in which an improvement plan is in place. The ability of a state university to submit an improvement plan to the board is limited to 1 fiscal year.

(b) The Chancellor of the State University System shall withhold disbursement of the institutional investment until the monitoring report is approved by the Board of Governors. A state university ~~that is~~ determined by the board to be making satisfactory progress on implementing the improvement plan shall

741272

receive no more than one-half of the withheld institutional investment in January and the balance of the withheld institutional investment in June. A state university that fails to make satisfactory progress may not have its full institutional investment restored. Any institutional investment funds that are not restored shall be redistributed in accordance with the board's performance-based metrics.

(4) Distributions of performance funding, as provided in this section, shall be made to each of the state universities listed in the Education and General Activities category in the General Appropriations Act.

(5) By October 1 of each year, the Board of Governors shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the previous fiscal year's performance funding allocation which must reflect the rankings and award distributions.

(6) The Board of Governors shall adopt regulations to administer this section ~~expires July 1, 2016~~.

Section 6. Subsection (4) is added to section 1002.391, Florida Statutes, to read:

1002.391 Auditory-oral education programs.—

(4) Beginning with the 2017-2018 school year, a school district shall add four 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.

Section 7. Subsections (1) and (2) of section 1002.53, Florida Statutes, are amended to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

741272

(1) The Voluntary Prekindergarten Education Program is created and shall be organized, designed, and delivered in accordance with s. 1(b) and (c), Art. IX of the State Constitution.

(2) Each child who resides in this state who will have attained the age of 4 years on or before September 1 of the school year is eligible for the Voluntary Prekindergarten Education Program during either that school year or the following school year. The child remains eligible until ~~the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. or until~~ the child is admitted to kindergarten, or unless he or she will have attained the age of 6 years by February 1 of any school year under s. 1003.21(1)(a)1 ~~whichever occurs first~~.

Section 8. Subsection (4) of section 1003.4282, Florida Statutes, is amended to read:

1003.4282 Requirements for a standard high school diploma.—

(4) ONLINE COURSE REQUIREMENT.—At least one course within the 24 credits required under this section must be completed through online learning. ~~A school district may not require a student to take the online course outside the school day or in addition to a student's courses for a given semester.~~

(a) An online course taken in grade 6, grade 7, or grade 8 fulfills the ~~this~~ requirement in this subsection. The ~~This~~ requirement is met through an online course offered by the Florida Virtual School, a virtual education provider approved by the State Board of Education, a high school, or an online dual enrollment course. A student who is enrolled in a full-time or


741272

part-time virtual instruction program under s. 1002.45 meets the ~~this~~ requirement.

(b) A district school board or a charter school governing board, as applicable, may offer students the following options to satisfy the online course requirement in this subsection:

1. Completion of a course in which a student earns a nationally recognized industry certification in information technology that is identified on the CAPE Industry Certification Funding List pursuant to s. 1008.44 or passage of the information technology certification examination without enrollment in or completion of the corresponding course or courses, as applicable.

2. Passage of an online content assessment, without enrollment in or completion of the corresponding course or courses, as applicable, by which the student demonstrates skills and competency in locating information and applying technology for instructional purposes.

For purposes of this subsection, a school district may not require a student to take the online course outside the school day or in addition to a student's courses for a given semester. This subsection ~~requirement~~ does not apply to a student who has an individual education plan under s. 1003.57 which indicates that an online course would be inappropriate or to an out-of-state transfer student who is enrolled in a Florida high school and has 1 academic year or less remaining in high school.

Section 9. Effective July 1, 2016, and upon the expiration of the amendment to section 1011.62, Florida Statutes, made by chapter 2015-222, Laws of Florida, paragraph (a) of subsection


741272

(4) of that section is amended, present subsections (13), (14), and (15) of that section are redesignated as subsections (14), (15), and (16), respectively, a new subsection (13) is added to that section, and present subsection (14) of that section 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 follows:

(4) COMPUTATION OF DISTRICT REQUIRED LOCAL EFFORT.—The Legislature shall prescribe the aggregate required local effort for all school districts collectively as an item in the General Appropriations Act for each fiscal year. The amount that each district shall provide annually toward the cost of the Florida Education Finance Program for kindergarten through grade 12 programs shall be calculated as follows:

(a) *Estimated taxable value calculations.*—

1.a. Not later than 2 working days <u>before</u> ~~prior to~~ July 19, the Department of Revenue shall certify to the Commissioner of Education its most recent estimate of the taxable value for school purposes in each school district and the total for all school districts in the state for the current calendar year based on the latest available data obtained from the local property appraisers. The value certified shall be the taxable value for school purposes for that year, and no further adjustments shall be made, except those made pursuant to paragraphs (c) and (d), or an assessment roll change required by


741272

final judicial decisions as specified in paragraph (15)(b) ~~(14)(b)~~. Not later than July 19, the Commissioner of Education shall compute a millage rate, rounded to the next highest one one-thousandth of a mill, which, when applied to 96 percent of the estimated state total taxable value for school purposes, would generate the prescribed aggregate required local effort for that year for all districts. The Commissioner of Education shall certify to each district school board the millage rate, computed as prescribed in this subparagraph, as the minimum millage rate necessary to provide the district required local effort for that year.

b. The General Appropriations Act shall direct the computation of the statewide adjusted aggregate amount for required local effort for all school districts collectively from ad valorem taxes to ensure that no school district’s revenue from required local effort millage will produce more than 90 percent of the district’s total Florida Education Finance Program calculation as calculated and adopted by the Legislature, and the adjustment of the required local effort millage rate of each district that produces more than 90 percent of its total Florida Education Finance Program entitlement to a level that will produce only 90 percent of its total Florida Education Finance Program entitlement in the July calculation.

2. On the same date as the certification in sub-subparagraph 1.a., the Department of Revenue shall certify to the Commissioner of Education for each district:

a. Each year for which the property appraiser has certified the taxable value pursuant to s. 193.122(2) or (3), if applicable, since the prior certification under sub-subparagraph


741272

1.a.

b. For each year identified in sub-subparagraph a., the taxable value certified by the appraiser pursuant to s. 193.122(2) or (3), if applicable, since the prior certification under sub-subparagraph 1.a. This is the certification that reflects all final administrative actions of the value adjustment board.

(13) FEDERALLY CONNECTED STUDENT SUPPLEMENT.—The federally connected student supplement is created to provide supplemental funding for school districts to support the education of students connected with federally owned military installations, National Aeronautics and Space Administration (NASA) real property, and Indian lands. To be eligible for this supplement, the district must be eligible for federal Impact Aid Program funds under s. 8003 of Title VIII of the Elementary and Secondary Education Act of 1965. The supplement shall be allocated annually to each eligible school district in the amount provided in the General Appropriations Act. The supplement shall be the sum of the student allocation and an exempt property allocation.

(a) The student allocation shall be calculated based on the number of students reported for federal Impact Aid Program funds, including students with disabilities, who meet one of the following criteria:

1. The student has a parent who is on active duty in the uniformed services or is an accredited foreign government official and military officer. Students with disabilities shall also be reported separately for this category.

2. The student resides on eligible federally owned Indian

741272

land. Students with disabilities shall also be reported separately for this category.

3. The student resides with a civilian parent who lives or works on eligible federal property connected with a military installation or NASA. The number of these students shall be multiplied by a factor of 0.5.

(b) The total number of federally connected students calculated under paragraph (a) shall be multiplied by a percentage of the base student allocation as provided in the General Appropriations Act. The total of the number of students with disabilities as reported separately under subparagraphs (a)1. and (a)2. shall be multiplied by an additional percentage of the base student allocation as provided in the General Appropriations Act. The base amount and the amount for students with disabilities shall be summed to provide the student allocation.

(c) The exempt property allocation shall be equal to the tax-exempt value of federal impact aid lands reserved as military installations, real property owned by NASA, or eligible federally owned Indian lands located in the district, as of January 1 of the previous year, multiplied by the millage authorized and levied under s. 1011.71(2).

(14) ~~(13)~~ QUALITY ASSURANCE GUARANTEE.—The Legislature may annually in the General Appropriations Act determine a percentage increase in funds per K-12 unweighted FTE as a minimum guarantee to each school district. The guarantee shall be calculated from prior year base funding per unweighted FTE student which shall include the adjusted FTE dollars as provided in subsection (15) ~~(14)~~, quality guarantee funds, and actual

741272

nonvoted discretionary local effort from taxes. From the base funding per unweighted FTE, the increase shall be calculated for the current year. The current year funds from which the guarantee shall be determined shall include the adjusted FTE dollars as provided in subsection (15) ~~(14)~~ and potential nonvoted discretionary local effort from taxes. A comparison of current year funds per unweighted FTE to prior year funds per unweighted FTE shall be computed. For those school districts which have less than the legislatively assigned percentage increase, funds shall be provided to guarantee the assigned percentage increase in funds per unweighted FTE student. Should appropriated funds be less than the sum of this calculated amount for all districts, the commissioner shall prorate each district's allocation. This provision shall be implemented to the extent specifically funded.

Section 10. Section 1011.6202, Florida Statutes, is created to read:

1011.6202 Principal Autonomy Pilot Program Initiative.—The Principal Autonomy Pilot Program Initiative is created within the Department of Education. The purpose of the pilot program is to provide the highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management while complying with constitutional requirements. The State Board of Education may, upon approval of a principal autonomy proposal, enter into a performance contract with up to seven district school boards for participation in the pilot program.

(1) PARTICIPATING SCHOOL DISTRICTS.—The district school

741272

boards in Broward, Duval, Escambia, Jefferson, Madison, Palm Beach, Pinellas, and Seminole Counties may submit to the state board for approval a principal autonomy proposal that exchanges statutory and rule exemptions for an agreement to meet performance goals established in the proposal. If approved by the state board, each of these school districts shall be eligible to participate in the pilot program for 3 years. At the end of the 3 years, the performance of all participating schools in the school district shall be evaluated.

(2) PRINCIPAL AUTONOMY PROPOSAL.—

(a) To participate in the pilot program, a school district must:

1. Identify three schools that received at least two school grades of "D" or "F" pursuant to s. 1008.34 during the previous 3 school years.

2. Identify three principals who have earned a highly effective rating on the prior year's performance evaluation pursuant to s. 1012.34, one of whom shall be assigned to each of the participating schools.

3. Describe the current financial and administrative management of each participating school; identify the areas in which each school principal will have increased fiscal and administrative autonomy, including the authority and responsibilities provided in s. 1012.28(8); and identify the areas in which each participating school will continue to follow district school board fiscal and administrative policies.

4. Explain the methods used to identify the educational strengths and needs of the participating school's students and identify how student achievement can be improved.

741272

5. Establish performance goals for student achievement, as defined in s. 1008.34(1), and explain how the increased autonomy of principals will help participating schools improve student achievement and school management.

6. Provide each participating school's mission and a description of its student population.

(b) The state board shall establish criteria, which must include the criteria listed in paragraph (a), for the approval of a principal autonomy proposal.

(c) A district school board must submit its principal autonomy proposal to the state board for approval by December 1 in order to begin participation in the subsequent school year. By February 28 of the school year in which the proposal is submitted, the state board shall notify the district school board in writing whether the proposal is approved.

(3) EXEMPTION FROM LAWS.—

(a) With the exception of those laws listed in paragraph (b), a participating school is exempt from the provisions of chapters 1000-1013 and rules of the state board that implement those exempt provisions.

(b) A participating school shall comply with the provisions of chapters 1000-1013, and rules of the state board that implement those provisions, pertaining to the following:

1. Those laws relating to the election and compensation of district school board members, the election or appointment and compensation of district school superintendents, public meetings and public records requirements, financial disclosure, and conflicts of interest.

2. Those laws relating to the student assessment program

741272

and school grading system, including chapter 1008.

3. Those laws relating to the provision of services to students with disabilities.

4. Those laws relating to civil rights, including s. 1000.05, relating to discrimination.

5. Those laws relating to student health, safety, and welfare.

6. Section 1001.42(4)(f), relating to the uniform opening date for public schools.

7. Section 1003.03, governing maximum class size, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level for a participating school.

8. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

9. Section 1012.33(5), relating to workforce reductions for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

10. Section 1012.335, relating to annual contracts for instructional personnel hired on or after July 1, 2011. This subparagraph does not apply to at-will employees.

11. Section 1012.34, relating to personnel evaluation procedures and criteria.

12. Those laws pertaining to educational facilities, including chapter 1013, except that s. 1013.20, relating to covered walkways for relocatables, and s. 1013.21, relating to the use of relocatable facilities exceeding 20 years of age, are eligible for exemption.

13. Those laws pertaining to participating school districts, including this section and ss. 1011.69(2) and

741272

1012.28(8).

(4) PROFESSIONAL DEVELOPMENT.—Each participating school district shall require that the principal of each participating school, a three-member leadership team from each participating school, and district personnel working with each participating school complete a nationally recognized school turnaround program which focuses on improving leadership, instructional infrastructure, talent management, and differentiated support and accountability. The required personnel must enroll in the school turnaround program upon acceptance into the pilot program.

(5) TERM OF PARTICIPATION.—The state board shall authorize a school district to participate in the pilot program for a period of 3 years commencing with approval of the principal autonomy proposal. Authorization to participate in the pilot program may be renewed upon action of the state board. The state board may revoke authorization to participate in the pilot program if the school district fails to meet the requirements of this section during the 3-year period.

(6) REPORTING.—Each participating school district shall submit an annual report to the state board. The state board shall annually report on the implementation of the Principal Autonomy Pilot Program Initiative. Upon completion of the pilot program's first 3-year term, the Commissioner of Education shall submit to the President of the Senate and the Speaker of the House of Representatives by December 1 a full evaluation of the effectiveness of the pilot program.

(7) FUNDING.—The Legislature may appropriate funding to the department in the General Appropriations Act for the costs of

741272

the pilot program, including administrative costs and enrollment costs for the school turnaround program, and an additional scholarship to each participating principal to be used at his or her school.

(8) RULEMAKING.—The State Board of Education shall adopt rules to administer this section.

Section 11. Subsection (2) of section 1011.69, Florida Statutes, is amended to read:

1011.69 Equity in School-Level Funding Act.—

(2) Beginning in the 2003-2004 fiscal year, district school boards shall allocate to schools within the district an average of 90 percent of the funds generated by all schools and guarantee that each school receives at least 80 percent, except schools participating in the Principal Autonomy Pilot Program Initiative under s. 1011.6202 are guaranteed to receive at least 90 percent, of the funds generated by that school based upon the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy. Total funding for each school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the school during the full-time equivalent student survey periods designated by the Commissioner of Education. If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in the schools in the district shall be provided federal funds.

741272

Section 12. Subsection (8) is added to section 1012.28, Florida Statutes, to read:

1012.28 Public school personnel; duties of school principals.—

(8) The principal of a school participating in the Principal Autonomy Pilot Program Initiative under s. 1011.6202 has the following additional authority and responsibilities:

(a) In addition to the authority provided in subsection (6), the authority to select qualified instructional personnel for placement or to refuse to accept the placement or transfer of instructional personnel by the district school superintendent. Placement of instructional personnel at a participating school in a participating school district does not affect the employee's status as a school district employee.

(b) The authority to deploy financial resources to school programs at the principal's discretion to help improve student achievement, as defined in s. 1008.34(1), and meet performance goals identified in the principal autonomy proposal submitted pursuant to s. 1011.6202.

(c) To annually provide to the district school superintendent and the district school board a budget for the operation of the participating school that identifies how funds provided pursuant to s. 1011.69(2) are allocated. The school district shall include the budget in the annual report provided to the State Board of Education pursuant to s. 1011.6202(6).

Section 13. 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


741272

career specialists; students performing clinical field experience.—

(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 of 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 a secondary school.

Section 14. Section 1012.731, Florida Statutes, is created to read:

1012.731 The Florida Best and Brightest Teacher Scholarship Program.—

(1) The Legislature recognizes that, second only to parents, teachers play the most critical role within schools in preparing students to achieve a high level of academic performance. The Legislature further recognizes that research

741272

has linked student outcomes to a teacher's own academic achievement. Therefore, it is the intent of the Legislature to designate teachers who have achieved high academic standards during their own education as Florida's best and brightest teacher scholars.

(2) There is created the Florida Best and Brightest Teacher Scholarship Program to be administered by the Department of Education. The scholarship program shall provide categorical funding for scholarships to be awarded to classroom teachers, as defined in s. 1012.01(2)(a), who have demonstrated a high level of academic achievement.

(3)(a) To be eligible for a scholarship, a classroom teacher must have achieved a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks in effect when the classroom teacher took the assessment and have been evaluated as highly effective pursuant to s. 1012.34 in the school year immediately preceding the year in which the scholarship will be awarded, unless the classroom teacher is newly hired by the district school board and has not been evaluated pursuant to s. 1012.34.

(b) In order to demonstrate eligibility for an award, an eligible classroom teacher must submit to the school district, no later than November 1, an official record of his or her SAT or ACT score demonstrating that the classroom teacher scored at or above the 80th percentile based on the National Percentile Ranks in effect when the teacher took the assessment. Once a classroom teacher is deemed eligible by the school district, including teachers deemed eligible in the 2015-2016 fiscal year, the teacher shall remain eligible as long as he or she remains

741272

employed by the school district as a classroom teacher at the time of the award and receives an annual performance evaluation rating of highly effective pursuant to s. 1012.34.

(4) Annually, by December 1, each school district shall submit to the department the number of eligible classroom teachers who qualify for the scholarship.

(5) Annually, by February 1, the department shall disburse scholarship funds to each school district for each eligible classroom teacher to receive a scholarship as provided in the General Appropriations Act. The amount disbursed shall include a scholarship award of $1,000, from the total amount of funds appropriated, for each eligible classroom teacher in a Title I school. Of the remaining funds, a scholarship in the amount provided in the General Appropriations Act shall be awarded to every eligible classroom teacher, including those in Title I schools. If the number of eligible classroom teachers exceeds the total appropriation authorized in the General Appropriations Act, the department shall prorate the per-teacher scholarship amount.

(6) Annually, by April 1, each school district shall award the scholarship to each eligible classroom teacher.

(7) For purposes of this section, the term "school district" includes the Florida School for the Deaf and the Blind and charter school governing boards.

Section 15. Subsection (3) of section 1012.75, Florida Statutes, is amended to read:

1012.75 Liability of teacher or principal; excessive force.—

(3) The Department of Education shall administer an

741272

educator liability insurance program, as provided in the General Appropriations Act, to protect full-time instructional personnel from liability for monetary damages and the costs of defending actions resulting from claims made against the instructional personnel arising out of occurrences in the course of activities within the instructional personnel's professional capacity. For purposes of this subsection, the terms "full-time," "part-time," and "administrative personnel" shall be defined by the individual district school board. For purposes of this subsection, the term "instructional personnel" has the same meaning as provided in s. 1012.01(2).

(a) Liability coverage of at least $2 million shall be provided to all full-time instructional personnel. Liability coverage may be provided to the following individuals who choose to participate in the program, at cost: part-time instructional personnel, administrative personnel, and students enrolled in a state-approved teacher preparation program pursuant to s. 1012.39(3).

(b) By August 1 of each year, the department shall notify the personnel specified in paragraph (a) of the pending procurement for liability coverage. By September 1 of each year, each district school board shall notify the personnel specified in paragraph (a) of the liability coverage provided pursuant to this subsection. The department shall develop the form of the notice which shall be used by each district school board. The notice must be on an 8 1/2-inch 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 shall be provided

741272

separately from any other correspondence. Each district school board shall certify to the department, by September 15 of each year, that the notification required by this paragraph 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.

~~(d) This subsection expires July 1, 2016.~~

Section 16. Section 1013.62, Florida Statutes, is amended to read:

1013.62 Charter schools capital outlay funding.—

(1) In each year in which funds are appropriated for charter school capital outlay purposes, the Commissioner of Education shall allocate the funds among eligible charter schools as specified in this section.

(a) To be eligible for a funding allocation, a charter school must:

1.a. Have been in operation for 3 or more years;

b. Be governed by a governing board established in the state for 3 or more years which operates both charter schools and conversion charter schools within the state;

c. Be an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds;

d. Have been accredited by the Commission on Schools of the Southern Association of Colleges and Schools; or

e. Serve students in facilities that are provided by a

741272

business partner for a charter school-in-the-workplace pursuant to s. 1002.33(15)(b).

2. Have financial stability for future operation as a charter school.

3. Have satisfactory student achievement based on state accountability standards applicable to the charter school.

4. Have received final approval from its sponsor pursuant to s. 1002.33 for operation during that fiscal year.

5. Serve students in facilities that are not provided by the charter school's sponsor.

~~(b) The first priority for charter school capital outlay funding is to allocate to charter schools that received funding in the 2005-2006 fiscal year an allocation of the same amount per capital outlay full-time equivalent student, up to the lesser of the actual number of capital outlay full-time equivalent students in the current year, or the capital outlay full-time equivalent students in the 2005-2006 fiscal year. After calculating the first priority, the second priority is to allocate excess funds remaining in the appropriation in an amount equal to the per capital outlay full-time equivalent student amount in the first priority calculation to eligible charter schools not included in the first priority calculation and to schools in the first priority calculation with growth greater than the 2005-2006 capital outlay full-time equivalent students. After calculating the first and second priorities, excess funds remaining in the appropriation must be allocated to all eligible charter schools.~~

~~(c) A charter school's allocation may not exceed one-fifteenth of the cost per student station specified in s.~~

741272

~~1013.64(6)(b). Before releasing capital outlay funds to a school district on behalf of the charter school, the Department of Education must ensure that the district school board and the charter school governing board enter into a written agreement that provides for the reversion of any unencumbered funds and all equipment and property purchased with public education funds to the ownership of the district school board, as provided for in subsection (3) if the school terminates operations. Any funds recovered by the state shall be deposited in the General Revenue Fund.~~

(b) ~~(d)~~ A charter school is not eligible for a funding allocation if it was created by the conversion of a public school and operates in facilities provided by the charter school's sponsor for a nominal fee, or at no charge, or if it is directly or indirectly operated by the school district.

(c) It is the intent of the Legislature that the public interest be protected by prohibiting personal financial enrichment by owners, operators, managers, and other affiliated parties of charter schools. A charter school is not eligible for a funding allocation unless the chair of the governing board and the chief administrative officer of the charter school annually certify under oath that the funds will be used solely and exclusively for constructing, renovating, or improving charter school facilities that are:

1. Owned by a school district, political subdivision of the state, municipality, Florida College System institution, or state university;

2. Owned by an organization, qualified as an exempt organization under s. 501(c)(3) of the Internal Revenue Code,

741272

whose articles of incorporation specify that upon the organization's dissolution, the subject property will be transferred to a school district, political subdivision of the state, municipality, Florida College System institution, or state university; or

3. Owned by and leased from a person who or an entity that is not an affiliated party of the charter school. For purposes of this paragraph, the term "affiliated party of the charter school" means the applicant for the charter school pursuant to s. 1002.33; the governing board of the charter school or a member of the governing board; the charter school owner; the charter school principal; an employee of the charter school; an independent contractor of the charter school or the governing board of the charter school; a relative, as defined in s. 1002.33(24)(a)2., of a charter school governing board member, a charter school owner, a charter school principal, a charter school employee, or an independent contractor of a charter school or charter school governing board; a subsidiary corporation, a service corporation, an affiliated corporation, a parent corporation, a limited liability company, a limited partnership, a trust, a partnership, or a related party that individually or through one or more entities that share common ownership or control that directly or indirectly manages, administers, controls, or oversees the operation of the charter school; or any person or entity, individually or through one or more entities that share common ownership, that directly or indirectly manages, administers, controls, or oversees the operation of any of the foregoing.

(d) The funding allocation for eligible charter schools

741272

shall be calculated as follows:

1. Eligible charter schools shall be grouped into categories based on their student populations according to the following criteria:

a. Seventy-five percent or greater who are eligible for free or reduced-price school lunch.

b. Twenty-five percent or greater with disabilities as defined in state board rule and consistent with the requirements of the Individuals with Disabilities Education Act.

2. If an eligible charter school does not meet the criteria for either category under subparagraph 1., its FTE shall be provided as the base amount of funding and shall be assigned a weight of 1.0. An eligible charter school that meets the criteria under sub-subparagraph 1.a. or sub-subparagraph 1.b. shall be provided an additional 25 percent above the base funding amount, and the total FTE shall be multiplied by a weight of 1.25. An eligible charter school that meets the criteria under both sub-subparagraphs 1.a. and 1.b. shall be provided an additional 50 percent above the base funding amount, and the FTE for that school shall be multiplied by a weight of 1.5.

3. The state appropriation for charter school capital outlay shall be divided by the total weighted FTE for all eligible charter schools to determine the base charter school per weighted FTE allocation amount. The per weighted FTE allocation amount shall be multiplied by the weighted FTE to determine each charter school’s capital outlay allocation.

~~(c) Unless otherwise provided in the General Appropriations Act, the funding allocation for each eligible charter school is~~

741272

~~determined by multiplying the school's projected student enrollment by one-fifteenth of the cost-per-student station specified in s. 1013.64(6)(b) for an elementary, middle, or high school, as appropriate. If the funds appropriated are not sufficient, the commissioner shall prorate the available funds among eligible charter schools. However, a charter school or charter lab school may not receive state charter school capital outlay funds greater than the one-fifteenth cost per student station formula if the charter school's combination of state charter school capital outlay funds, capital outlay funds calculated through the reduction in the administrative fee provided in s. 1002.33(20), and capital outlay funds allowed in s. 1002.32(9)(e) and (h) exceeds the one-fifteenth cost per student station formula.~~

(2)(a) ~~(f)~~ The department shall calculate the eligible charter school funding allocations. Funds shall be allocated using ~~distributed on the basis of the capital outlay~~ full-time equivalent membership from ~~by grade level, which is calculated by averaging the results of~~ the second and third enrollment surveys and free and reduced-price school lunch data. The department shall recalculate the allocations periodically based on the receipt of revised information, on a schedule established by the Commissioner of Education.

(b) The department ~~of Education~~ shall distribute capital outlay funds monthly, beginning in the first quarter of the fiscal year, based on one-twelfth of the amount the department reasonably expects the charter school to receive during that fiscal year. The commissioner shall adjust subsequent distributions as necessary to reflect each charter school's


741272

recalculated allocation ~~actual student enrollment as reflected in the second and third enrollment surveys. The commissioner shall establish the intervals and procedures for determining the projected and actual student enrollment of eligible charter schools~~.

(3) ~~(2)~~ A charter school's governing body may use charter school capital outlay funds for the following purposes:

(a) Purchase of real property.

(b) Construction of school facilities.

(c) Purchase, lease-purchase, or lease of permanent or relocatable school facilities.

(d) Purchase of vehicles to transport students to and from the charter school.

(e) Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of 5 years or longer.

(f) Effective July 1, 2008, purchase, lease-purchase, or lease of new and replacement equipment, and enterprise resource software applications that are classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support schoolwide administration or state-mandated reporting requirements.

(g) Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.

(h) Purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and

741272

equipment.

Conversion charter schools may use capital outlay funds received through the reduction in the administrative fee provided in s. 1002.33(20) for renovation, repair, and maintenance of school facilities that are owned by the sponsor.

(4) ~~(3)~~ If ~~When~~ a charter school is nonrenewed or terminated, any unencumbered funds and all equipment and property purchased with district public funds shall revert to the ownership of the district school board, as provided for in s. 1002.33(8)(e) and (f). In the case of a charter lab school, any unencumbered funds and all equipment and property purchased with university public funds shall revert to the ownership of the state university that issued the charter. The reversion of such equipment, property, and furnishings shall focus on recoverable assets, but not on intangible or irrecoverable costs such as rental or leasing fees, normal maintenance, and limited renovations. The reversion of all property secured with public funds is subject to the complete satisfaction of all lawful liens or encumbrances. If there are additional local issues such as the shared use of facilities or partial ownership of facilities or property, these issues shall be agreed to in the charter contract prior to the expenditure of funds.

(5) ~~(4)~~ The Commissioner of Education shall specify procedures for submitting and approving requests for funding under this section and procedures for documenting expenditures.

(6) ~~(5)~~ The annual legislative budget request of the Department of Education shall include a request for capital outlay funding for charter schools. The request shall be based

741272

on the projected number of students to be served in charter schools who meet the eligibility requirements of this section. ~~A dedicated funding source, if identified in writing by the Commissioner of Education and submitted along with the annual charter school legislative budget request, may be considered an additional source of funding.~~

~~(6) Unless authorized otherwise by the Legislature, allocation and proration of charter school capital outlay funds shall be made to eligible charter schools by the Commissioner of Education in an amount and in a manner authorized by subsection (1).~~

Section 17. Paragraphs (a) and (b) of subsection (2) and paragraphs (b) through (e) of subsection (6) of section 1013.64, Florida Statutes, are amended to read:

1013.64 Funds for comprehensive educational plant needs; construction cost maximums for school district capital projects.—Allocations from the Public Education Capital Outlay and Debt Service Trust Fund to the various boards for capital outlay projects shall be determined as follows:

(2)(a) The department shall establish, as a part of the Public Education Capital Outlay and Debt Service Trust Fund, a separate account, in an amount determined by the Legislature, to be known as the "Special Facility Construction Account." The Special Facility Construction Account shall be used to provide necessary construction funds to school districts which have urgent construction needs but which lack sufficient resources at present, and cannot reasonably anticipate sufficient resources within the period of the next 3 years, for these purposes from currently authorized sources of capital outlay revenue. A school

741272

district requesting funding from the Special Facility Construction Account shall submit one specific construction project, not to exceed one complete educational plant, to the Special Facility Construction Committee. A ~~No~~ district may not ~~shall~~ receive funding for more than one approved project in any 3-year period or while any portion of the district's participation requirement is outstanding. The first year of the 3-year period shall be the first year a district receives an appropriation. The department shall encourage a construction program that reduces the average size of schools in the district. The request must meet the following criteria to be considered by the committee:

1. The project must be deemed a critical need and must be recommended for funding by the Special Facility Construction Committee. Before ~~Prior to~~ developing construction plans for the proposed facility, the district school board must request a preapplication review by the Special Facility Construction Committee or a project review subcommittee convened by the chair of the committee to include two representatives of the department and two staff members from school districts not eligible to participate in the program. A school district may request a preapplication review at any time; however, if the district school board seeks inclusion in the department's next annual capital outlay legislative budget request, the preapplication review request must be made before February 1. Within 90 ~~60~~ days after receiving the preapplication review request, the committee or subcommittee must meet in the school district to review the project proposal and existing facilities. To determine whether the proposed project is a critical need,

741272

the committee or subcommittee shall consider, at a minimum, the capacity of all existing facilities within the district as determined by the Florida Inventory of School Houses; the district's pattern of student growth; the district's existing and projected capital outlay full-time equivalent student enrollment as determined by the demographic, revenue, and education estimating conferences established in s. 216.136 ~~department~~; the district's existing satisfactory student stations; the use of all existing district property and facilities; grade level configurations; and any other information that may affect the need for the proposed project.

2. The construction project must be recommended in the most recent survey or survey amendment cooperatively prepared ~~surveys~~ by the district and the department, and approved by the department under the rules of the State Board of Education. If a district employs a consultant in the preparation of a survey or survey amendment, the consultant may not be employed by or receive compensation from a third party that designs or constructs a project recommended by the survey.

3. The construction project must appear on the district's approved project priority list under the rules of the State Board of Education.

4. The district must have selected and had approved a site for the construction project in compliance with s. 1013.36 and the rules of the State Board of Education.

5. The district shall have developed a district school board adopted list of facilities that do not exceed the norm for net square feet occupancy requirements under the State Requirements for Educational Facilities, using all possible


741272

programmatic combinations for multiple use of space to obtain maximum daily use of all spaces within the facility under consideration.

6. Upon construction, the total cost per student station, including change orders, must not exceed the cost per student station as provided in subsection (6) except for cost overruns created by a disaster as defined in s. 252.34 or an unforeseeable circumstance beyond the district's control as determined by the Special Facility Construction Committee.

7. There shall be an agreement signed by the district school board stating that it will advertise for bids within 30 days of receipt of its encumbrance authorization from the department.

8. For construction projects for which Special Facilities Construction Account funding is sought before the 2019-2020 fiscal year, the district shall, at the time of the request and for a continuing period necessary to meet the district's participation requirement ~~of 3 years~~, levy the maximum millage against its ~~their~~ nonexempt assessed property value as allowed in s. 1011.71(2) or shall raise an equivalent amount of revenue from the school capital outlay surtax authorized under s. 212.055(6). Beginning with construction projects for which Special Facilities Construction Account funding is sought in the 2019-2020 fiscal year, the district shall, for a minimum of 3 years before submitting the request and for a continuing period necessary to meet its participation requirement, levy the maximum millage against the district's nonexempt assessed property value as authorized under s. 1011.71(2) or shall raise an equivalent amount of revenue from the school capital outlay

741272

surtax authorized under s. 212.055(6). Any district with a new or active project, funded under the provisions of this subsection, shall be required to budget no more than the value of 1 mill ~~1.5 mills~~ per year to the project until the district's ~~to satisfy the annual~~ participation requirement relating to the local discretionary capital improvement millage or the equivalent amount of revenue from the school capital outlay surtax is satisfied ~~in the Special Facility Construction Account~~.

9. If a contract has not been signed 90 days after the advertising of bids, the funding for the specific project shall revert to the Special Facility New Construction Account to be reallocated to other projects on the list. However, an additional 90 days may be granted by the commissioner.

10. The department shall certify the inability of the district to fund the survey-recommended project over a continuous 3-year period using projected capital outlay revenue derived from s. 9(d), Art. XII of the State Constitution, as amended, paragraph (3)(a) of this section, and s. 1011.71(2).

11. The district shall have on file with the department an adopted resolution acknowledging its ~~3-year~~ commitment to satisfy its participation requirement, which is equivalent to ~~of~~ all unencumbered and future revenue acquired from s. 9(d), Art. XII of the State Constitution, as amended, paragraph (3)(a) of this section, and s. 1011.71(2), in the year of the initial appropriation and for the 2 years immediately following the initial appropriation.

12. Final phase III plans must be certified by the district school board as complete and in compliance with the building and


741272

life safety codes before June 1 of the year the application is made ~~prior to August 1~~.

(b) The Special Facility Construction Committee shall be composed of the following: two representatives of the Department of Education, a representative from the Governor's office, a representative selected annually by the district school boards, and a representative selected annually by the superintendents. A representative of the department shall chair the committee.

(6)

(b)1. A district school board may ~~must~~ not use funds from the following sources: Public Education Capital Outlay and Debt Service Trust Fund; School District and Community College District Capital Outlay and Debt Service Trust Fund; Classrooms First Program funds provided in s. 1013.68; nonvoted 1.5-mill levy of ad valorem property taxes provided in s. 1011.71(2); Classrooms for Kids Program funds provided in s. 1013.735; District Effort Recognition Program funds provided in s. 1013.736; or High Growth District Capital Outlay Assistance Grant Program funds provided in s. 1013.738 for any new construction of educational plant space with a total cost per student station, including change orders, that equals more than:

a. $17,952 for an elementary school,

b. $19,386 for a middle school, or

c. $25,181 for a high school,

(January 2006) as adjusted annually to reflect increases or decreases in the Consumer Price Index.

2. School districts shall maintain accurate documentation related to the costs of all new construction of educational

741272

plant space reported to the Department of Education pursuant to paragraph (d). The Auditor General shall review the documentation maintained by the school districts and verify compliance with the limits under this paragraph during its scheduled operational audits of the school district. The Auditor General shall make the final determination on district compliance.

3. The Office of Program Policy Analysis and Government Accountability (OPPAGA), in consultation with the department, shall:

a. Conduct a study of the cost per student station amounts using the most recent available information on construction costs. In this study, the costs per student station should represent the costs of classroom construction and administrative offices as well as the supplemental costs of core facilities, including required media centers, gymnasiums, music rooms, cafeterias and their associated kitchens and food service areas, vocational areas, and other defined specialty areas, including exceptional student education areas. The study must take into account appropriate cost-effectiveness factors in school construction and should include input from industry experts. OPPAGA must provide the results of the study and recommendations on the cost per student station to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31, 2017.

b. Conduct a study of the State Requirements for Education Facilities (SREF)to identify current requirements that can be eliminated or modified in order to decrease the cost of construction of educational facilities while ensuring student

741272

safety. OPPAGA must provide the results of the study, and an overall recommendation as to whether SREF should be retained, to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31, 2017.

4. Effective July 1, 2017, in addition to the funding sources listed in subparagraph 1., a district school board may not use funds from any sources for new construction of educational plant space with a total cost per student station, including change orders, which equals more than the current adjusted amounts provided in sub-subparagraphs 1.a.-c. which shall subsequently be adjusted annually to reflect increases or decreases in the Consumer Price Index.

5.~~2.~~ A district school board must not use funds from the Public Education Capital Outlay and Debt Service Trust Fund or the School District and Community College District Capital Outlay and Debt Service Trust Fund for any new construction of an ancillary plant that exceeds 70 percent of the average cost per square foot of new construction for all schools.

(c) Except as otherwise provided, new construction initiated by a district school board on or after July 1, 2017, may ~~after June 30, 1997, must~~ not exceed the cost per student station as provided in paragraph (b). A school district that exceeds the cost per student station provided in paragraph (b), as determined by the Auditor General, shall be subject to the following sanctions:

1. The school district shall be ineligible for allocations from the Public Education Capital Outlay and Debt Service Trust Fund for the next 3 years in which the school district would have received allocations had the violation not occurred.


741272

2. The school district shall be subject to the supervision of a district capital outlay oversight committee. The oversight committee is authorized to approve all capital outlay expenditures of the school district, including new construction, renovations, and remodeling, for 3 fiscal years following the violation.

a. Each oversight committee shall be composed of the following:

(I) One appointee of the Commissioner of Education who has significant financial management, school facilities construction, or related experience.

(II) One appointee of the office of the state attorney with jurisdiction over the district.

(III) One appointee of the Auditor General who is a licensed certified public accountant.

b. An appointee to the oversight committee may not be employed by the school district; be a relative, as defined in s. 1002.33(24)(a)2., of any school district employee; or be an elected official. Each appointee must sign an affidavit attesting to these conditions and affirming that no conflict of interest exists in his or her oversight role.

(d) The department shall:

1. Compute for each calendar year the statewide average construction costs for facilities serving each instructional level, for relocatable educational facilities, for administrative facilities, and for other ancillary and auxiliary facilities. The department shall compute the statewide average costs per student station for each instructional level.

2. Annually review the actual completed construction costs

741272

of educational facilities in each school district. For any school district in which the total actual cost per student station, including change orders, exceeds the statewide limits established in paragraph (b), the school district shall report to the department the actual cost per student station and the reason for the school district's inability to adhere to the limits established in paragraph (b). The department shall collect all such reports and shall provide these reports to the Auditor General for verification purposes ~~report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 of each year a summary of each school district's spending in excess of the cost per student station provided in paragraph (b) as reported by the school districts~~.

Cost per student station includes contract costs, legal and administrative costs, fees of architects and engineers, furniture and equipment, and site improvement costs. Cost per student station does not include the cost of purchasing or leasing the site for the construction or the cost of related offsite improvements.

~~(c) The restrictions of this subsection on the cost per student station of new construction do not apply to a project funded entirely from proceeds received by districts through provisions of ss. 212.055 and 1011.73 and s. 9, Art. VII of the State Constitution, if the school board approves the project by majority vote.~~

Section 18. Subsection (7) is added to section 1013.74, Florida Statutes, to read:

741272

1013.74 University authorization for fixed capital outlay projects.—

(7) A university board of trustees may expend reserve or carry-forward balances from prior year operational and programmatic appropriations for fixed capital outlay projects approved by the Board of Governors which include significant academic instructional space or critical deferred maintenance needs in this area.

Section 19. Competency-based innovation pilot program.—Beginning with the 2016-2017 school year, a competency-based innovation pilot program is established within the Department of Education.

(1) For the purposes of this section, the term "competency-based education" means a system in which a student may advance to higher levels of learning after demonstrating a mastery of concepts and skills instead of after a specified timeframe.

(2) Public schools in Lake, Palm Beach, Pinellas, and Seminole Counties; P.K. Yonge Developmental Research School; and school districts or charter schools designated by the Commissioner of Education may submit an application to the department for approval of a competency-based innovation pilot program. The application shall be submitted on a form provided and by a date specified by the department and must include, but need not be limited to, the following:

(a) A vision for the pilot program, including a timeline for the program and the timeframe for districtwide implementation of competency-based education.

(b) Annual goals and performance outcomes that participating schools must meet, including, but not limited to:

741272

1. Student performance, as defined in s. 1008.34, Florida Statutes.

2. Promotion and retention rates.

3. Graduation rates.

4. Indicators of college and career readiness.

(c) A communication plan for stakeholders, including businesses and community members.

(d) A scope of, and a timeline for, professional development.

(e) A plan for student progression based on mastery of concepts and skills, including proposed methods to determine the degree to which a student has attained mastery of concepts and skills.

(f) A plan for using technology and digital and blended learning to enhance student achievement and to facilitate competency-based education.

(g) A plan for how resources will be allocated for the pilot program at both the district and school levels.

(h) The recruitment and selection of participating schools.

(i) Rules to be waived, as authorized in subsection (3), as necessary to implement the program.

(3) In addition to the waivers provided in s. 1001.10(3), Florida Statutes, the State Board of Education may authorize the Commissioner of Education to grant waivers relating to the awarding of credit and pupil progression.

(4) Students participating in the pilot program at participating schools shall be reported and generate funding consistent with the requirements of s. 1011.62, Florida Statutes.

741272

(5) The department shall:

(a) Compile student and staff schedules before and after implementation of the pilot program.

(b) Provide access to statewide, standardized assessments pursuant to s. 1008.22(3), Florida Statutes.

(c) By June 1 of each year, provide a report summarizing the activities and accomplishments of the pilot programs and any recommendations for statutory revisions for statewide implementation to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(6) This section expires June 30, 2021.

Section 20. Paragraph (a) of subsection (20) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program, consistent with the needs of the charter school, are provided by the school district at the request of the charter school, that any funds due to the charter school under the federal lunch program be paid to the charter school as soon as the charter school begins serving food under the federal lunch program, and that the charter school is paid at the same time and in the same manner under the federal lunch program as other public schools serviced by the sponsor or the


741272

school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to student information systems that are used by public schools in the district in which the charter school is located. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district.

2. A total administrative fee for the provision of such services shall be calculated based upon up to 5 percent of the available funds defined in paragraph (17)(b) for all students, except that when 75 percent or more of the students enrolled in the charter school are exceptional students as defined in s. 1003.01(3), the 5 percent of those available funds shall be calculated based on unweighted full-time equivalent students. However, a sponsor may only withhold up to a 5-percent administrative fee for enrollment for up to and including 250 students. For charter schools with a population of 251 or more students, the difference between the total administrative fee calculation and the amount of the administrative fee withheld may only be used for capital outlay purposes specified in s. 1013.62(3) ~~s. 1013.62(2)~~.

3. For high-performing charter schools, as defined in ch. 2011-232, a sponsor may withhold a total administrative fee of up to 2 percent for enrollment up to and including 250 students


741272

per school.

4. In addition, a sponsor may withhold only up to a 5-percent administrative fee for enrollment for up to and including 500 students within a system of charter schools which meets all of the following:

a. Includes both conversion charter schools and nonconversion charter schools;

b. Has all schools located in the same county;

c. Has a total enrollment exceeding the total enrollment of at least one school district in the state;

d. Has the same governing board; and

e. Does not contract with a for-profit service provider for management of school operations.

5. The difference between the total administrative fee calculation and the amount of the administrative fee withheld pursuant to subparagraph 4. may be used for instructional and administrative purposes as well as for capital outlay purposes specified in s. 1013.62(3) ~~s. 1013.62(2)~~.

6. For a high-performing charter school system that also meets the requirements in subparagraph 4., a sponsor may withhold a 2-percent administrative fee for enrollments up to and including 500 students per system.

7. Sponsors shall not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum 5-percent administrative fee withheld pursuant to this paragraph.

8. The sponsor of a virtual charter school may withhold a fee of up to 5 percent. The funds shall be used to cover the cost of services provided under subparagraph 1. and

741272

implementation of the school district's digital classrooms plan pursuant to s. 1011.62.

Section 21. This act shall take effect July 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 education; amending s. 1001.42, F.S.; revising the duties of a district school board; creating s. 1001.66, F.S.; creating a Florida College System Performance-Based Incentive for Florida College System institutions; requiring the State Board of Education to adopt certain metrics and benchmarks; providing for funding and allocation of the incentives; authorizing the state board to withhold an institution's incentive under certain circumstances; requiring the Commissioner of Education to withhold certain disbursements under certain circumstances; providing for reporting and rulemaking; creating s. 1001.67, F.S.; establishing a collaboration between the state board and the Legislature to designate certain Florida College System institutions as distinguished colleges; specifying standards for the designation; requiring the state board to award the designation to certain Florida College System institutions; providing that the designated institutions are eligible for funding as specified in


741272

the General Appropriations Act; amending s. 1001.7065, F.S.; deleting obsolete provisions; revising the academic and research excellence standards for the preeminent state research universities program; requiring the Board of Governors to designate a state university that meets specified requirements as an "emerging preeminent state research university"; requiring an emerging preeminent state research university to submit a certain plan to the board and meet specified expectations to receive certain funds; providing for the distribution of certain funding increases; deleting provisions relating to the preeminent state research university enhancement initiative and special course requirement authorization; amending s. 1001.92, F.S.; requiring performance-based metrics to include specified wage thresholds; requiring the board to establish minimum performance funding eligibility thresholds; prohibiting a state university that fails to meet the state's threshold from eligibility for a share of the state's investment performance funding; requiring the board to adopt regulations; deleting an expiration; amending s. 1002.391, F.S.; requiring a school district to add a specified number of points to the calculation of a matrix of services for a student who is deaf and enrolled in an auditory-oral education program; amending s. 1002.53, F.S.; revising eligibility for the Voluntary Prekindergarten Education Program; amending s. 1003.4282, F.S.;

741272

revising the online course requirement; authorizing a district school board or a charter school governing board to offer certain additional options to meet the requirement; amending s. 1011.62, F.S.; creating a federally connected student supplement for school districts; specifying eligibility requirements and calculations for allocations of the supplement; creating s. 1011.6202, F.S.; creating the Principal Autonomy Pilot Program Initiative; providing a purpose for the pilot program; providing a procedure for a school district to in the pilot program; providing requirements for participating school districts and schools; exempting participating schools from certain laws and rules; requiring principals of participating schools and specified personnel to complete a nationally recognized school turnaround program; providing for the term of participation in the pilot program; providing for renewal or revocation of authorization to participate in the pilot program; providing for reporting, funding, and eligibility requirements for certain funding and rulemaking; amending s. 1011.69, F.S.; requiring participating district school boards to allocate a specified percentage of certain funds to participating schools; amending s. 1012.28, F.S.; providing additional authority and responsibilities of the principal of a participating school; amending s. 1012.39, F.S.; providing requirements regarding liability insurance for students performing clinical field experience;

741272

creating s. 1012.731, F.S.; providing legislative intent; establishing the Florida Best and Brightest Teacher Scholarship Program; providing eligibility criteria; requiring a school district to annually submit the number of eligible teachers to the Department of Education; providing for funding and the disbursement of funds; defining the term "school district"; amending s. 1012.75, F.S.; requiring annual notification of liability insurance to specified personnel; abrogating the scheduled expiration of the educator liability insurance program; amending s. 1013.62, F.S.; deleting provisions relating to priorities for charter school capital outlay funding; deleting provisions relating to a charter school's allocation; providing that a charter school is not eligible for funding unless it meets certain requirements; defining the term "affiliated party of the charter school"; revising the funding allocation calculation; requiring the Department of Education to calculate and periodically recalculate, as necessary, the eligible charter school funding allocations; deleting provisions relating to certain duties of the Commissioner of Education; amending s. 1013.64, F.S.; providing that a school district may not receive funds from the Special Facility Construction Account under certain circumstances; revising the criteria for a request for funding; authorizing the request for a preapplication review to take place at any time; providing exceptions; revising the timeframe for


741272

completion of the review; providing that certain capital outlay full-time equivalent student enrollment estimates be determined by specified estimating conferences; requiring surveys to be cooperatively prepared by certain entities and approved by the Department of Education; prohibiting certain consultants from specified employment and compensation; providing an exception to prohibiting the cost per student station from exceeding a certain amount; requiring a school district to levy the maximum millage against certain property value under certain circumstances; reducing the required millage to be budgeted for a project; requiring certain plans to be finalized by a specified date; requiring a representative of the department to chair the Special Facility Construction Committee; requiring school districts to maintain accurate documentation related to specified costs; requiring the Auditor General to review such documentation; providing that the Auditor General makes final determinations on compliance; requiring the Office of Program Policy Analysis and Government Accountability to conduct a study, in consultation with the department, on cost per student station amounts and on the State Requirements for Education Facilities; requiring reports to the Governor and the Legislature by a specified date; prohibiting a district school board from using funds for specified purposes for certain projects; providing sanctions for school districts that exceed certain

741272

costs; providing for the creation of a district capital outlay oversight committee; providing for membership of the oversight committee; requiring the department to provide certain reports to the Auditor General; deleting a provision relating to applicability of certain restrictions on the cost per student station of new construction; amending s. 1013.74, F.S.; authorizing a university board of trustees to expend reserve or carry-forward balances for certain projects; establishing a competency-based innovation pilot program within the Department of Education; defining the term "competency-based education"; authorizing certain schools to apply to the department for approval of a competency-based innovation pilot program; specifying information to be included in the application; authorizing certain waivers; providing reporting and funding requirements for students participating in the pilot program at participating schools; requiring the department to compile certain information and provide access to statewide, standardized assessments; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; specifying the contents of the annual report; providing for expiration of the pilot program; amending s. 1002.33, F.S.; conforming cross-references; providing an effective date.

189798

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Flores) recommended the following:

Senate Amendment to Amendment (741272)

Between lines 796 and 797
insert:
(c) A classroom teacher may demonstrate eligibility for a scholarship through a nationally accredited, advanced credential earned after his or her initial teacher certification. Such certifications shall replace the SAT or ACT score eligibility requirements of paragraphs (a) and (b).

803616

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (741272)

Delete lines 1310 - 1311
and insert:
as determined by the Auditor General, shall be subject to sanctions. However, if the Auditor General determines that the cost per student station overage is de minimus or due to extraordinary circumstances, the sanctions do not apply. The sanctions are as follows:

538852

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (741272) (with directory and title amendments)

Delete lines 1298 - 1371

and insert:

decreases in the Consumer Price Index, except for projects funded as provided in paragraph (e).

5.~~2.~~ A district school board must not use funds from the Public Education Capital Outlay and Debt Service Trust Fund or the School District and Community College District Capital


538852

Outlay and Debt Service Trust Fund for any new construction of an ancillary plant that exceeds 70 percent of the average cost per square foot of new construction for all schools.

(c) Except as otherwise provided, new construction initiated by a district school board on or after July 1, 2017, may ~~after June 30, 1997, must~~ not exceed the cost per student station as provided in paragraph (b). A school district that exceeds the cost per student station provided in paragraph (b), as determined by the Auditor General, shall be subject to the following sanctions:

1. The school district shall be ineligible for allocations from the Public Education Capital Outlay and Debt Service Trust Fund for the next 3 years in which the school district would have received allocations had the violation not occurred.

2. The school district shall be subject to the supervision of a district capital outlay oversight committee. The oversight committee is authorized to approve all capital outlay expenditures of the school district, including new construction, renovations, and remodeling, for 3 fiscal years following the violation.

a. Each oversight committee shall be composed of the following:

(I) One appointee of the Commissioner of Education who has significant financial management, school facilities construction, or related experience.

(II) One appointee of the office of the state attorney with jurisdiction over the district.

(III) One appointee of the Auditor General who is a licensed certified public accountant.


538852

b. An appointee to the oversight committee may not be employed by the school district; be a relative, as defined in s. 1002.33(24)(a)2., of any school district employee; or be an elected official. Each appointee must sign an affidavit attesting to these conditions and affirming that no conflict of interest exists in his or her oversight role.

(d) The department shall:

1. Compute for each calendar year the statewide average construction costs for facilities serving each instructional level, for relocatable educational facilities, for administrative facilities, and for other ancillary and auxiliary facilities. The department shall compute the statewide average costs per student station for each instructional level.

2. Annually review the actual completed construction costs of educational facilities in each school district. For any school district in which the total actual cost per student station, including change orders, exceeds the statewide limits established in paragraph (b), the school district shall report to the department the actual cost per student station and the reason for the school district's inability to adhere to the limits established in paragraph (b). The department shall collect all such reports and shall provide these reports to the Auditor General for verification purposes ~~report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 of each year a summary of each school district's spending in excess of the cost per student station provided in paragraph (b) as reported by the school districts~~.

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Cost per student station includes contract costs, legal and administrative costs, fees of architects and engineers, furniture and equipment, and site improvement costs. Cost per student station does not include the cost of purchasing or leasing the site for the construction or the cost of related offsite improvements.

====== 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 1096

and insert:

paragraphs (b) through (d) of subsection (6) of section 1013.64,

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

Delete lines 1668 - 1670

and insert:

General; amending s.

567806

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (741272) (with title amendment)

Delete lines 1156 - 1160
and insert:
department under the rules of the State Board of Education.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 1640 - 1642

567806

and insert:

Department of Education; providing an exception to prohibiting

359184

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (741272)

Delete lines 943 - 966
and insert:
state university;
3. Owned by and leased from a person who or an entity that is not an affiliated party of the charter school. For purposes of this paragraph, the term "affiliated party of the charter school" means the applicant for the charter school pursuant to s. 1002.33; the governing board of the charter school or a

359184

member of the governing board; the charter school owner; the charter school principal; an employee of the charter school; an independent contractor of the charter school or the governing board of the charter school; a relative, as defined in s. 1002.33(24)(a)2., of a charter school governing board member, a charter school owner, a charter school principal, a charter school employee, or an independent contractor of a charter school or charter school governing board; a subsidiary corporation, a service corporation, an affiliated corporation, a parent corporation, a limited liability company, a limited partnership, a trust, a partnership, or a related party that individually or through one or more entities that share common ownership or control that directly or indirectly manages, administers, controls, or oversees the operation of the charter school; or any person or entity, individually or through one or more entities that share common ownership, that directly or indirectly manages, administers, controls, or oversees the operation of any of the foregoing; or

4. In compliance with ss. 1013.45-1013.50, relating to requirements for educational facilities contracting and construction.

476310

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (741272)

Delete line 944
and insert:
3. Owned by and leased, at a fair market value in the school district in which the charter school is located, from a person or entity that

314320

576-01815-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to education; creating s. 1001.66, F.S.; creating a Florida College System Performance-Based Incentive for Florida College System institutions; requiring the State Board of Education to adopt certain metrics and benchmarks; providing for funding and allocation of the incentives; authorizing the state board to withhold an institution's incentive under certain circumstances; requiring the Commissioner of Education to withhold certain disbursements under certain circumstances; providing for reporting and rulemaking; amending s. 1001.7065, F.S., and reenacting subsection (1), relating to state university system shared governance collaboration; deleting obsolete provisions; revising the academic and research excellence standards for the preeminent state research universities program; requiring the Board of Governors to designate a state university that meets specified requirements as an "emerging preeminent state research university"; authorizing the Board of Governors to suspend, rescind, or revoke a university's designation under certain circumstances; requiring an emerging preeminent state research university to submit a certain plan to the board and meet specified expectations to receive certain funds; providing for the distribution of certain funding increases; deleting provisions relating to the

314320

576-01815-16

preeminent state research university enhancement initiative and special course requirement authorization; amending s. 1001.92, F.S.; requiring performance-based metrics to include specified wage thresholds; requiring the board to establish minimum performance funding eligibility thresholds; prohibiting a state university that fails to meet the state's threshold from eligibility for a share of the state's investment performance funding; requiring the board to adopt regulations; deleting an expiration; amending s. 1012.39, F.S.; providing requirements regarding liability insurance for students performing clinical field experience; amending s. 1012.75, F.S.; requiring annual notification of liability insurance to specified personnel; abrogating the scheduled expiration of the educator liability insurance program; providing an effective date.

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

Section 1. Section 1001.66, Florida Statutes, is created to read:

1001.66 Florida College System Performance-Based Incentive.—

(1) A Florida College System Performance-Based Incentive shall be awarded to Florida College System institutions using performance-based metrics adopted by the State Board of Education. The performance-based metrics must include retention rates; program completion and graduation rates; postgraduation

employment, salaries, and continuing education for workforce education and baccalaureate programs, with wage thresholds that reflect the added value of the certificate or degree; and outcome measures appropriate for associate of arts degree recipients. The state board shall adopt benchmarks to evaluate each institution's performance on the metrics to measure the institution's achievement of institutional excellence or need for improvement and minimum requirements for eligibility to receive performance funding.

(2) Each fiscal year, the amount of funds available for allocation to the Florida College System institutions based on the performance-based funding model shall consist of the state's investment in performance funding plus institutional investments consisting of funds to be redistributed from the base funding of the Florida College System Program Fund as determined in the General Appropriations Act. The State Board of Education shall establish minimum performance funding eligibility thresholds for the state's investment and the institutional investments. An institution that fails to meet the minimum state investment performance funding eligibility threshold is ineligible for a share of the state's investment in performance funding. The institutional investment shall be restored for all institutions eligible for the state's investment under the performance-based funding model.

(3)(a) Each Florida College System institution's share of the performance funding shall be calculated based on its relative performance on the established metrics in conjunction with the institutional size and scope.

(b) A Florida College System institution that fails to meet

the State Board of Education's minimum institutional investment performance funding eligibility threshold shall have a portion of its institutional investment withheld by the state board and must submit an improvement plan to the state board which specifies the activities and strategies for improving the institution's performance. The state board must review and approve the improvement plan and, if the plan is approved, must monitor the institution's progress in implementing the activities and strategies specified in the improvement plan. The institution shall submit monitoring reports to the state board by December 31 and May 31 of each year in which an improvement plan is in place. The ability of an institution to submit an improvement plan to the state board is limited to 1 fiscal year.

(c) The Commissioner of Education shall withhold disbursement of the institutional investment until the monitoring report is approved by the State Board of Education. A Florida College System institution determined by the state board to be making satisfactory progress on implementing the improvement plan shall receive no more than one-half of the withheld institutional investment in January and the balance of the withheld institutional investment in June. An institution that fails to make satisfactory progress may not have its full institutional investment restored. Any institutional investment funds that are not restored shall be redistributed in accordance with the state board's performance-based metrics.

(4) Distributions of performance funding, as provided in this section, shall be made to each of the Florida College System institutions listed in the Florida Colleges category in the General Appropriations Act.

(5) By October 1 of each year, the State Board of Education shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the previous fiscal year's performance funding allocation, which must reflect the rankings and award distributions.

(6) The State Board of Education shall adopt rules to administer this section.

Section 2. Subsection (1) of section 1001.7065, Florida Statutes, is reenacted, and subsections (2), (3), and (5) through (9) of that section are amended, to read:

1001.7065 Preeminent state research universities program.—

(1) STATE UNIVERSITY SYSTEM SHARED GOVERNANCE COLLABORATION.—A collaborative partnership is established between the Board of Governors and the Legislature to elevate the academic and research preeminence of Florida's highest-performing state research universities in accordance with this section. The partnership stems from the State University System Governance Agreement executed on March 24, 2010, wherein the Board of Governors and leaders of the Legislature agreed to a framework for the collaborative exercise of their joint authority and shared responsibility for the State University System. The governance agreement confirmed the commitment of the Board of Governors and the Legislature to continue collaboration on accountability measures, the use of data, and recommendations derived from such data.

(2) ACADEMIC AND RESEARCH EXCELLENCE STANDARDS. ~~Effective July 1, 2013,~~ The following academic and research excellence standards are established for the preeminent state research universities program:

(a) An average weighted grade point average of 4.0 or higher on a 4.0 scale and an average SAT score of 1800 or higher on a 2400-point scale or 1200 or higher on a 1600-point scale for fall semester incoming freshmen, as reported annually.

(b) A top-50 ranking on at least two well-known and highly respected national public university rankings, including, but not limited to, the U.S. News and World Report rankings, reflecting national preeminence, using most recent rankings.

(c) A freshman retention rate of 90 percent or higher for full-time, first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System (IPEDS).

(d) A 6-year graduation rate of 70 percent or higher for full-time, first-time-in-college students, as reported annually to the IPEDS.

(e) Six or more faculty members at the state university who are members of a national academy, as reported by the Center for Measuring University Performance in the Top American Research Universities (TARU) annual report or the official membership directories maintained by each national academy.

(f) Total annual research expenditures, including federal research expenditures, of $200 million or more, as reported annually by the National Science Foundation (NSF).

(g) Total annual research expenditures in diversified nonmedical sciences of $150 million or more, based on data reported annually by the NSF.

(h) A top-100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.

(i) One hundred or more total patents awarded by the United

States Patent and Trademark Office for the most recent 3-year period.

(j) Four hundred or more doctoral degrees awarded annually, including professional doctoral degrees awarded in medical and health care disciplines, as reported in the Board of Governors Annual Accountability Report.

(k) Two hundred or more postdoctoral appointees annually, as reported in the TARU annual report.

(l) An endowment of $500 million or more, as reported in the Board of Governors Annual Accountability Report.

(3) PREEMINENT STATE RESEARCH UNIVERSITY DESIGNATION.—

(a) The Board of Governors shall designate each state ~~research~~ university that meets at least 11 of the 12 academic and research excellence standards identified in subsection (2) as a "preeminent state research university." ~~preeminent state research university.~~

(b) The Board of Governors shall designate each state university that meets at least 6 of the 12 academic and research excellence standards identified in subsection (2) as an "emerging preeminent state research university."

The Board of Governors may, upon petition of a university designated under this subsection, temporarily suspend or rescind the designation, or may, with the concurrence of the Governor, the President of the Senate, and the Speaker of the House of Representatives, revoke the designation of a university under this subsection.

(5) PREEMINENT STATE RESEARCH UNIVERSITIES PROGRAM ~~UNIVERSITY~~ SUPPORT.—

(a) A state ~~research~~ university that is designated as a preeminent state research university~~, as of July 1, 2013, meets all 12 of the academic and research excellence standards identified in subsection (2), as verified by the Board of Governors,~~ shall submit to the Board of Governors a 5-year benchmark plan with target rankings on key performance metrics for national excellence. Upon approval by the Board of Governors, and upon the university's meeting the benchmark plan goals annually, the Board of Governors shall award the university its proportionate share of any funds provided annually to support the program created under this section ~~an amount specified in the General Appropriations Act to be provided annually throughout the 5-year period. Funding for this purpose is contingent upon specific appropriation in the General Appropriations Act~~.

(b) A state university designated as an emerging preeminent state research university shall submit to the Board of Governors a 5-year benchmark plan with target rankings on key performance metrics for national excellence. Upon approval by the Board of Governors, and upon the university's meeting the benchmark plan goals annually, the Board of Governors shall award the university its proportionate share of any funds provided annually to support the program created under this section.

(c) The award of funds under this subsection is contingent upon funding provided in the General Appropriations Act to support the preeminent state research universities program created under this section. Funding increases appropriated beyond the amounts funded in the previous fiscal year shall be distributed as follows:

1. Each designated preeminent state research university that meets the criteria in paragraph (a) shall receive an equal amount of funding.

2. Each designated emerging preeminent state research university that meets the criteria in paragraph (b) shall receive an amount of funding that is equal to one-half of the total increased amount awarded to each designated preeminent state research university.

~~(6) PREEMINENT STATE RESEARCH UNIVERSITY ENHANCEMENT INITIATIVE.—A state research university that, as of July 1, 2013, meets 11 of the 12 academic and research excellence standards identified in subsection (2), as verified by the Board of Governors, shall submit to the Board of Governors a 5-year benchmark plan with target rankings on key performance metrics for national excellence. Upon the university's meeting the benchmark plan goals annually, the Board of Governors shall award the university an amount specified in the General Appropriations Act to be provided annually throughout the 5-year period for the purpose of recruiting National Academy Members, expediting the provision of a master's degree in cloud virtualization, and instituting an entrepreneurs-in-residence program throughout its campus. Funding for this purpose is contingent upon specific appropriation in the General Appropriations Act.~~

~~(7) PREEMINENT STATE RESEARCH UNIVERSITY SPECIAL COURSE REQUIREMENT AUTHORITY. In order to provide a jointly shared educational experience, a university that is designated a preeminent state research university may require its incoming first-time-in-college students to take a 9-to-12-credit set of~~

~~unique courses specifically determined by the university and published on the university's website. The university may stipulate that credit for such courses may not be earned through any acceleration mechanism pursuant to s. 1007.27 or s. 1007.271 or any other transfer credit. All accelerated credits earned up to the limits specified in ss. 1007.27 and 1007.271 shall be applied toward graduation at the student's request.~~

(6) ~~(8)~~ PREEMINENT STATE RESEARCH UNIVERSITY FLEXIBILITY AUTHORITY.—The Board of Governors is encouraged to identify and grant all reasonable, feasible authority and flexibility to ensure that a designated preeminent state research university is free from unnecessary restrictions.

(7) ~~(9)~~ PROGRAMS OF EXCELLENCE THROUGHOUT THE STATE UNIVERSITY SYSTEM.—The Board of Governors is encouraged to establish standards and measures whereby individual programs in state universities that objectively reflect national excellence can be identified and make recommendations to the Legislature as to how any such programs could be enhanced and promoted.

Section 3. Section 1001.92, Florida Statutes, is amended to read:

1001.92 State University System Performance-Based Incentive.—

(1) A State University System Performance-Based Incentive shall be awarded to state universities using performance-based metrics adopted by the Board of Governors of the State University System. The performance-based metrics must include graduation rates~~;~~ retention rates~~;~~ postgraduation education rates~~;~~ degree production~~;~~ affordability~~;~~ postgraduation employment and salaries, including wage thresholds that reflect

the added value of a baccalaureate degree; access;~~,~~ and other metrics approved by the board in a formally noticed meeting. The board shall adopt benchmarks to evaluate each state university's performance on the metrics to measure the state university's achievement of institutional excellence or need for improvement and minimum requirements for eligibility to receive performance funding.

(2) Each fiscal year, the amount of funds available for allocation to the state universities based on the performance-based funding model ~~metrics~~ shall consist of the state's investment in ~~appropriation for~~ performance funding~~, including increases in base funding~~ plus institutional investments consisting of funds deducted from the base funding of each state university in the State University System~~,~~ in an amount provided in the General Appropriations Act. The Board of Governors shall establish minimum performance funding eligibility thresholds for the state's investment and the institutional investments. A state university that fails to meet the minimum state investment performance funding eligibility threshold is ineligible for a share of the state's investment in performance funding. The institutional investment shall be restored for each institution eligible for the state's investment under the performance-based funding model ~~metrics~~.

(3)(a) A state university that fails to meet the Board of Governors' minimum institutional investment performance funding eligibility threshold shall have ~~a portion of~~ its institutional investment withheld by the board and must submit an improvement plan to the board that specifies the activities and strategies for improving the state university's performance. The board must

review and approve the improvement plan and, if the plan is approved, must monitor the state university's progress in implementing the activities and strategies specified in the improvement plan. The state university shall submit monitoring reports to the board by December 31 and May 31 of each year in which an improvement plan is in place. The ability of a state university to submit an improvement plan to the board is limited to 1 fiscal year.

(b) The Chancellor of the State University System shall withhold disbursement of the institutional investment until the monitoring report is approved by the Board of Governors. A state university ~~that is~~ determined by the board to be making satisfactory progress on implementing the improvement plan shall receive no more than one-half of the withheld institutional investment in January and the balance of the withheld institutional investment in June. A state university that fails to make satisfactory progress may not have its full institutional investment restored. Any institutional investment funds that are not restored shall be redistributed in accordance with the board's performance-based metrics.

(4) Distributions of performance funding, as provided in this section, shall be made to each of the state universities listed in the Education and General Activities category in the General Appropriations Act.

(5) By October 1 of each year, the Board of Governors shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the previous fiscal year's performance funding allocation which must reflect the rankings and award distributions.

(6) The Board of Governors shall adopt regulations to administer this section ~~expires July 1, 2016~~.

Section 4. 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.—

(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 of 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 a secondary school.

Section 5. Subsection (3) of section 1012.75, Florida Statutes, is amended to read:

1012.75 Liability of teacher or principal; excessive force.—

(3) The Department of Education shall administer an educator liability insurance program, as provided in the General Appropriations Act, to protect full-time instructional personnel from liability for monetary damages and the costs of defending actions resulting from claims made against the instructional personnel arising out of occurrences in the course of activities within the instructional personnel's professional capacity. For purposes of this subsection, the terms "full-time," "part-time," and "administrative personnel" shall be defined by the individual district school board. For purposes of this subsection, the term "instructional personnel" has the same meaning as provided in s. 1012.01(2).

(a) Liability coverage of at least $2 million shall be provided to all full-time instructional personnel. Liability coverage may be provided to the following individuals who choose to participate in the program, at cost: part-time instructional personnel, administrative personnel, and students enrolled in a state-approved teacher preparation program pursuant to s. 1012.39(3).

(b) By August 1 of each year, the department shall notify the personnel specified in paragraph (a) of the pending procurement for liability coverage. By September 1 of each year, each district school board shall notify the personnel specified in paragraph (a) of the liability coverage provided pursuant to this subsection. The department shall develop the form of the notice which shall be used by each district school board. The notice must be on an 8 1/2-inch 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 shall be provided separately from any other correspondence. Each district school board shall certify to the department, by September 15 of each year, that the notification required by this paragraph 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.

~~(d) This subsection expires July 1, 2016.~~

Section 6. This act shall take effect July 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 Appropriations

BILL:	CS/SB 524
INTRODUCER:	Higher Education Committee and Senator Gaetz
SUBJECT:	State University System Performance-based Incentives
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 524 codifies performance-based funding accountability of the state universities and modifies the State University System (SUS) Performance-Based Incentive to:

- Require the performance-based metrics to include wage thresholds that reflect the added value of a baccalaureate degree.
- Require the Florida Board of Governors of the State University System of Florida (BOG or board) to establish minimum performance funding eligibility thresholds for the state's investment and the institutional investment.
- Prohibit a state university that fails to meet the state's investment performance funding threshold from eligibility to receive a share of the state's investment performance funding.

Additionally, the bill requires the BOG to adopt a regulation to implement the SUS Performance-Based Incentive statutory provisions.

During the 2015A Special Session, the Legislature adopted the substance of SB 524 in ch. 2015-222, L.O.F., the implementing bill for the 2015-2016 General Appropriations Act (GAA). These provisions will expire on July 1, 2016, unless the Legislature acts to codify the policy beyond the 2015-2016 fiscal year. SB 524 protects the SUS Performance-Based Incentive from repeal by reenacting modified provisions and providing an effective date of July 1, 2016.

The bill has no impact on state funds. The amount of performance funding available to SUS institutions is determined annually in the GAA. The changes to the SUS Performance-Based

Incentive may impact an institution's eligibility for performance funding, but the impact is indeterminable.

The bill is effective July 1, 2016.

II. Present Situation:

The Legislature has established performance-based funding models in the recent years to evaluate the performance of Florida's public educational institutions, such as state universities and Florida College System institutions, based on identified performance metrics.

In 2014, the Legislature required that performance funding be allocated based on the BOG's Performance Funding Model approved on January 16, 2014.[1] The BOG's Performance Funding Model contained 10 performance metrics that evaluate the state universities on the following:[2]

- Percent of bachelor's degree graduates employed and/or continuing their education;
- Average wages of employed baccalaureate graduates;
- Cost per undergraduate degree;
- Six-year graduation rate (full-time and part-time first time in college (FTIC));
- Academic Progress Rate (second year retention with grade point average above 2.0);
- Bachelor's degrees awarded in areas of strategic emphasis (including Science, Technology, Engineering, and Math (STEM) education);
- University access rate (percent of undergraduates with a Pell Grant);
- Graduate degrees awarded in areas of strategic emphasis (including STEM);
- Two additional metrics, one chosen by each of the following:
  - Board of Governors and
  - University Board of Trustees

The performance of state universities are evaluated based on the benchmarks adopted by the BOG for achievement of excellence or improvement in these specified metrics. The 2014-2015 GAA appropriated $200 million for State University Performance Based Incentives, which included $100 million in new funding and $100 million redistributed from a proportionate share of each state university's base funds.[3] A state university that qualified for the new funding, also received its full base funding.[4] A state university that failed to meet the minimum performance threshold established by the BOG had a portion of its base funding withheld and was required to submit a performance improvement plan (plan) to the BOG.[5] The board was required to approve the plan and monitor the university's progress on implementing the performance measures specified in the plan.[6] Full base funding for a state university was restored upon the board's

[1] Specific Appropriation 143, ch. 2014-51, L.O.F.
[2] Florida Board of Governors, *Meeting Minutes* (January 16, 2014), *available at* http://www.flbog.edu/documents_meetings/0187_0790_5874_10.2.2%20BOG%202014_01_16_Board_of_Governors_minutes.pdf; *see also* Florida Board of Governors, *Performance Funding Model Overview*, *available at* http://www.flbog.edu/about/budget/docs/performance_funding/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-April2015.pdf.
[3] Specific Appropriation 143, ch. 2014-51, L.O.F.
[4] *Id*.
[5] *Id*.
[6] Specific Appropriation 143, ch. 2014-51, L.O.F.

approval of the plan and progress monitoring reports.[7] Full base funding was not restored for a state university that fails to make satisfactory progress on meeting its performance improvement plan expectations.[8]

During the 2015A Special Session, the Legislature codified the SUS Performance-Based Incentive, which is based on indicators of institutional attainment of performance metrics adopted by the BOG.[9] These performance metrics include graduation rates, retention rates, postgraduation education rates, degree production, affordability, postgraduation employment and salaries, access, and other metrics approved by the board in a noticed meeting.[10] The Legislature instructed the BOG to adopt benchmarks to evaluate each state university's performance on the metrics to determine a state university's achievement of institutional excellence or need for improvement.[11] The 2015-2016 GAA appropriated $400 million for the SUS Performance-Based Incentive, which included $150 million for the state investment and $250 million for the institutional investment.[12]

III. Effect of Proposed Changes:

This bill codifies performance-based funding accountability of the state universities and modifies the SUS Performance-Based Incentive to:

- Require the performance-based metrics to include wage thresholds that reflect the added value of a baccalaureate degree.
- Require the BOG to establish minimum performance funding eligibility thresholds for the state's investment and the institutional investment.
- Prohibit a state university that fails to meet the state's investment performance funding threshold from eligibility to receive a share of the state's investment performance funding.

Additionally, the bill requires the BOG to adopt a regulation to implement the SUS Performance-Based Incentive statutory provisions.

During the 2015A Special Session, the Legislature adopted the substance of SB 524 in ch. 2015-222, L.O.F., the implementing bill for the 2015-2016 GAA. These provisions will expire on July 1, 2016, unless the Legislature acts to codify the policy beyond the 2015-2016 fiscal year. SB 524 protects the SUS Performance-Based Incentive from repeal by reenacting modified provisions and providing an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[7] *Id*.
[8] *Id*.
[9] Section 1001.92, F.S., *as created by* s. 14, ch. 2015-222, L.O.F.
[10] *Id*.
[11] *Id*.
[12] Specific Appropriation 138, ch. 2015-232, L.O.F.

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 BOG, "There is no discernable fiscal impact on local governments. At this time, Board staff are unable to discern the impact of raising the wage threshold for the post-graduation metric on universities and the effect of scoring for performance based funding."[13]

The BOG is conducting an analysis to establish an appropriate threshold for the postgraduation metric that would reflect the added value of a baccalaureate degree.[14]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1001.92 of the Florida Statutes.

[13] Email, Florida Board of Governors, *2016 Agency Legislative Bill Analysis for SB 524* (Oct. 29, 2015), at 1, on file with the Committee on Education staff.
[14] Email, Florida Board of Governors, *2016 Agency Legislative Bill Analysis for SB 524* (Oct. 29, 2015), at 2, on file with the Committee on Education staff.

IX. Additional Information:

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

CS by Higher Education on November 17, 2015:
The committee substitute restores current law regarding limiting to one fiscal year, the ability of state universities to submit performance improvement plans to the Florida Board of Governors of the State University System of Florida to receive institutional investment performance funding.

B. Amendments:

None.

By the Committee on Higher Education; and Senator Gaetz

589-01297-16 2016524c1

A bill to be entitled

An act relating to state university system performance-based incentives; amending s. 1001.92, F.S.; requiring performance-based metrics to include specified wage thresholds; requiring the Board of Governors to establish minimum performance funding eligibility thresholds; prohibiting a state university that fails to meet the state's threshold from eligibility for a share of the state's investment performance funding; requiring the board to adopt a regulation; providing an effective date.

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

Section 1. Section 1001.92, Florida Statutes, is amended to read:

1001.92 State University System Performance-Based Incentive.—

(1) A State University System Performance-Based Incentive shall be awarded to state universities using performance-based metrics adopted by the Board of Governors of the State University System. The performance-based metrics must include graduation rates~~,~~; retention rates~~,~~; postgraduation education rates~~,~~; degree production~~,~~; affordability~~,~~; postgraduation employment and salaries, including wage thresholds that reflect the added value of a baccalaureate degree; access~~,~~; and other metrics approved by the board in a formally noticed meeting. The board shall adopt benchmarks to evaluate each state university's performance on the metrics to measure the state university's

589-01297-16 2016524c1

achievement of institutional excellence or need for improvement and minimum requirements for eligibility to receive performance funding.

(2) Each fiscal year, the amount of funds available for allocation to the state universities based on the performance-based metrics shall consist of the state's appropriation for performance funding~~, including increases in base funding~~ plus institutional investments consisting of funds deducted from the base funding of each state university in the State University System~~,~~ in an amount provided in the General Appropriations Act. The Board of Governors shall establish minimum performance funding eligibility thresholds for both the state's investment and the institutional investment. A state university that fails to meet the state's investment performance funding threshold is not eligible for a share of the state's investment performance funding. The institutional investment shall be restored for each institution eligible for the state's investment under the performance-based metrics.

(3)(a) A state university that fails to meet the Board of Governors' minimum institutional investment performance funding threshold shall have ~~a portion of~~ its institutional investment withheld by the board and must submit an improvement plan to the board that specifies the activities and strategies for improving the state university's performance. The board must review and approve the improvement plan and, if the plan is approved, must monitor the state university's progress in implementing the activities and strategies specified in the improvement plan. The state university shall submit monitoring reports to the board by December 31 and May 31 of each year in which an improvement plan

is in place. The ability of a state university to submit an improvement plan to the board is limited to 1 fiscal year.

(b) The Chancellor of the State University System shall withhold disbursement of the institutional investment until the monitoring report is approved by the Board of Governors. A state university that is determined by the board to be making satisfactory progress on implementing the improvement plan shall receive no more than one-half of the withheld institutional investment in January and the balance of the withheld institutional investment in June. A state university that fails to make satisfactory progress may not have its full institutional investment restored. Any institutional investment funds that are not restored shall be redistributed in accordance with the board's performance-based metrics.

(4) Distributions of performance funding, as provided in this section, shall be made to each of the state universities listed in the Education and General Activities category in the General Appropriations Act.

(5) By October 1 of each year, the Board of Governors shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the previous fiscal year's performance funding allocation which must reflect the rankings and award distributions.

(6) The Board of Governors shall adopt a regulation to implement this section ~~expires July 1, 2016~~.

Section 2. This act shall take effect July 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 Appropriations

BILL:	SB 572
INTRODUCER:	Senator Altman
SUBJECT:	Involuntary Examinations Under the Baker Act
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Favorable**
2.	Maida	Cibula	JU	**Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 572 adds advanced registered nurse practitioners (ARNP) and physician assistants (PA) to the list of health care providers who are authorized to initiate an involuntary mental health examination of another person under the Baker Act. An authorized health care provider may initiate the examination by executing a certificate stating that he or she examined a person within the past 48 hours and found that the person appears to meet the criteria for involuntary examination. The certificate must also state the observations on which the conclusion is based.

The bill has an indeterminate fiscal impact.

The bill's effective date is July 1, 2016.

II. Present Situation:

The Florida Mental Health Act

In 1971, the Florida Legislature passed the Florida Mental Health Act, also known as "The Baker Act," to address mental health needs of the state.[1] The Baker Act, codified in part I of ch. 394, F.S., provides the authority and process for the voluntary and involuntary examination of persons showing evidence of a mental illness. It further provides for the subsequent inpatient or outpatient placement of individuals for treatment.

Under the Baker Act, a person may be taken by a law enforcement officer to a receiving facility for an involuntary examination if there is reason to believe the person has a mental illness and, because of the mental illness, the person:

[1] Section 1, ch. 71-131, Laws of Fla.

- Has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination and is unable to determine for himself or herself whether examination is necessary; and
- Is likely, without care or treatment, to suffer from neglect or refuse to care for himself or herself, or cause substantial harm to, or be a danger to, himself or herself or others.[2]

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.[3]

Involuntary examinations may be initiated by a circuit court or by a law enforcement officer.[4] A law enforcement officer, as defined by s. 943.10, F.S.,[5] may take into custody a person who appears to meet the criteria for involuntary examination. The officer may then transport that person to the nearest receiving facility for examination.[6]

Similarly, the following professionals, having examined an individual within the preceding 48 hours, may initiate an involuntary examination by executing a certificate stating that the individual meets the criteria for involuntary examination:[7]

- A physician licensed under ch. 458, F.S., or ch. 459, F.S, who has experience in the diagnosis and treatment of mental and nervous disorders;
- A physician employed by a facility operated by the U.S. Department of Veterans Affairs which qualifies as a receiving or treatment facility under ch. 394, F.S.;
- A clinical psychologist, as defined in s. 490.003(7), F.S., who has three years of post-doctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the U.S. Department of Veterans Affairs which qualifies as a receiving or treatment facility under ch. 394, F.S.;[8]
- A psychiatric nurse who is an ARNP certified under s. 464.012, F.S., has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician;[9]
- A mental health counselor licensed under ch. 491, F.S.;
- A marriage and family therapist licensed under ch. 491, F.S.; and
- A clinical social worker licensed under ch. 491, F.S.

[2] Section 394.463(1), F.S.
[3] Section 394.463(2)(f)(i), F.S.
[4] Section 394.463(2)(a), F.S.
[5] Under section 943.10, F.S., a law enforcement officer is defined as "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."
[6] *See generally* Section 394.463(2), F.S.
[7] Section 394.463(2)(a)3., F.S.
[8] *See* Section 394.455(2), F.S.
[9] *See* Section 394.455(23), F.S.

The Department of Children and Families (DCF) administers[10] the Baker Act through receiving facilities that provide for the examination of persons showing evidence of a mental illness. Receiving facilities are designated by the DCF and may be public or private facilities that provide for the examination and short-term treatment of persons who meet the criteria under the Baker Act.[11]

Once received by a facility, a patient must be examined by a physician, a clinical psychologist, or a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a receiving facility without unnecessary delay.[12] The patient may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others.[13] Upon recommendation of the administrator of the receiving facility, a patient who requires additional treatment may be transported to a treatment facility.[14] Treatment facilities are designated by the DCF and are state-owned, state-operated, or state-supported hospitals that provide extended treatment and hospitalization beyond what is provided in a receiving facility.[15]

Advanced Registered Nurse Practitioners

Currently, ARNPs[16] are not included as health care providers authorized by s. 394.463(2)(a)3., F.S., to initiate an involuntary examination.

Part I of chapter 464, F.S., governs the licensure and regulation of nurses in this state. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON).

A person is eligible for certification as an ARNP, if he or she holds a current, active registered nursing license and, as determined by the BON:[17]

- Satisfactorily completes at least one year of a formal post-basic education program, the primary purpose of which is to prepare nurses for advanced or specialized practice;[18]

[10] *See generally* section 394.457, F.S. DCF is designated as the "Mental Health Authority" of Florida and shall exercise executive and administrative supervision over all mental health facilities, programs, and services.
[11] Section 394.455(26), F.S.
[12] Section 394.463(2)(f), F.S.
[13] *Id.*
[14] Section 394.467(1), F.S.
[15] Section 394.455(32), F.S.
[16] An ARNP is defined under s. 464.003(3), F.S., as "any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, including certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners."
[17] Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C., which provides that applications for certification as an advanced registered nurse practitioner pursuant to s. 464.012(3), F.S., must include proof of current national advanced practice certification from an approved nursing specialty board.
[18] Section 464.0115(1), F.S., relating to the certification of clinical nurse specialists, states that any nurse seeking certification as a clinical nurse specialist must apply to the department and submit proof that he or she holds a current license to practice professional nursing, a master's degree in a clinical nursing specialty, and either: (a) Proof of current certification in a specialty area as a clinical nurse specialist from a nationally recognized certifying body as determined by the board; or (b) Proof that he or she holds a master's degree in a specialty area for which there is no certification within the clinical nurse specialist role and specialty and proof of having completed 1,000 hours of clinical experience in the clinical specialty for which he or she is academically prepared, with a minimum of 500 hours of clinical practice after graduation. The applicant for certification as a clinical nurse specialist must submit an affidavit to the Board of Nursing affirming the required hours of clinical experience. Falsification of the affidavit constitutes grounds for discipline in accordance with s. 464.018(1)(f), F.S.

- Holds a current national advanced practice certification from a board approved specialty board;
- Holds a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills; or
- Submits proof that the applicant holds a current national advanced practice certification from a BON-approved nursing specialty board.

An ARNP applicant must also pass a criminal background screening and pay applicable fees. Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

Section 464.003, F. S., lists three categories of ARNP: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.[19] All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.[20]

An ARNP may carry out treatments as specified in statute, including:[21]
- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.; and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above, an ARNP may also perform other acts as authorized by statute and within his or her specialty.[22] Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.[23]

Physician Assistants

Physician assistants, as defined in s. 458.347 (2)(e), F.S., and s. 459.022(2)(e), F.S., are also not included as health care providers authorized by s. 394.463(2)(a)3, F.S., to execute a certificate stating an individual meets the criteria for an involuntary examination.

Section 458.347, F.S., and Rule 64B-8, F.A.C., along with s. 459.022, F.S., and Rule and 64B15, F.A.C., govern the licensure and regulation of PAs in this state. PAs are licensed by the DOH and are regulated by the Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM); however, the DOH Council on PAs may make recommendations to the boards.[24] A person may be licensed as a PA if he or she:
- Is at least 18 years of age;
- Graduates from an approved PA program or its equivalent or meets standards approved by the BOM or the BOOM, as applicable;

[19] Section 464.012(2), F.S.
[20] Section 464.012(3), F.S.
[21] *Id.*
[22] Section 464.012(4), F.S.
[23] Section 464.012(4)(c)5, F.S.
[24] Section 458.347(9), F.S.

- Satisfactorily passes a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA); and
- Completes the DOH application form and remits an application fee.

A PA must also pass a criminal background check. The renewal of PA licenses is biennial and contingent upon completion of certain continuing medical education requirements.

III. Effect of Proposed Changes:

The bill amends s. 394.463(2), F.S., to add ARNPs and PAs to the list of health care providers who may initiate the involuntary examination of another person under the Baker Act. As a result, an ARNP or PA may initiate an involuntary examination by executing a certificate stating that he or she has examined another person within the past 48 hours and found that the person appears to meet the criteria for involuntary examination. The certificate must also state the observations on which the conclusion is based.

The bill also amends s. 494.455, F.S., to define "advanced registered nurse practitioner" as "a person licensed in the state to practice professional nursing and certified in advanced or specialized nursing as defined in s. 464.003, F.S."[25] and to tie the definition of a "physician assistant" to the existing definition under s. 458.347(2)(e), F.S.[26]

Sections 3 through 8 of the bill amend various sections of the Florida Statutes to conform cross-references to the definitions in s. 394.455, F.S.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[25] "Advanced or specialized nursing practice," as defined in s. 464.003(2), F.S., means "in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the Board of Nursing which, by virtue of post-basic specialized education, training, and experience, are appropriately performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the ARNP may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The ARNP may also perform certain acts of medical diagnosis and treatment, prescription, and operation.

[26] Physician assistant as defined in s. 458.347(2)(e), F.S., means, "a person who is a graduate of an approved program or its equivalent or meets standards approved by the boards and is licensed to perform medical services delegated by the supervising physician."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 572 may result in additional individuals being taken to a private receiving facility for an involuntary examination.

C. Government Sector Impact:

Because the bill increases the number of enumerated health care providers authorized to issue certificates for involuntary examination under the Baker Act, involuntary examinations may rise. The rise in involuntary examinations may commensurately increase government sector costs to an indeterminate extent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Altman

16-00798-16 2016572__

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.455, F.S.; defining terms; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to execute a certificate that finds that a person appears to meet the criteria for involuntary examination under the Baker Act of persons believed to have mental illness; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) through (21) of section 394.455, Florida Statutes, are redesignated as subsections (3) through (22), respectively, present subsections (22) through (38) of that section are redesignated as subsections (24) through (40), respectively, and new subsections (2) and (23) are added to that section, to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(2) "Advanced registered nurse practitioner" means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(23) "Physician assistant" has the same meaning as defined in s. 458.347(2)(e).

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Section 2. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A ~~No~~ fee may not ~~shall~~ be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer

shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

Section 3. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse

examination of person with or requesting child custody.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(10) ~~s. 394.455(9)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

Section 4. Paragraphs (a) and (c) of subsection (3) of section 394.495, Florida Statutes, are amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(3), (5), (22), (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~;

(c) A person who is under the direct supervision of a professional as defined in s. 394.455(3), (5), (22), (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491.

Section 5. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(3), (5), (22), (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 6. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(28) ~~394.455(26)~~, respectively.

Section 7. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or mental health treatment facilities as defined by s. 394.455(34) ~~s. 394.455(32)~~.

Section 8. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian may ~~shall~~ not commit a ward to a mental health treatment facility, as defined in s. 394.455(34) ~~s. 394.455(32)~~, without an involuntary placement proceeding as provided by law.

Section 9. This act shall take effect July 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 Appropriations Committee			
BILL:	CS/SB 718		
INTRODUCER:	Transportation Committee and Senator Sobel		
SUBJECT:	Identification Cards		
DATE:	February 24, 2016	REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	**Fav/CS**
2.	Gusky	Miller	ATD	**Recommended: Favorable**
3.	Gusky	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 718 allows a person with a developmental disability, or a parent or guardian of a child or ward with a developmental disability to voluntarily request to be issued an identification card with a "D" designation for the person diagnosed with a developmental disability.

The Department of Highway Safety and Motor Vehicles (DHSMV) will issue the identification card upon proof of diagnosis of a developmental disability by a licensed physician and payment of a $10 fee. The additional $10 fee is deposited into the Operations and Maintenance Trust Fund administered by the Agency for Persons with Disabilities (APD). A replacement identification card that includes the designation may be issued without payment of the $25 replacement fee.

To the extent that individuals apply for and obtain the "D" designation authorized in the bill at the time their identification cards are issued, renewed, or replaced, there will be a positive fiscal impact on the APD's Operations and Maintenance Trust Fund, and a negative fiscal impact on the General Revenue Fund, the DHSMV's Highway Safety Operating Trust Fund and issuing county tax collectors. These impacts are indeterminate and expected to be insignificant.[1]

The bill provides an effective date of October 1, 2016, however, the bill specifies that the "D" designation will not be available on identification cards until the DHSMV implements the new designs for the driver license and identification card, which is anticipated to be in 2017.

[1] Department of Highway Safety and Motor Vehicles, *SB 718 Agency Bill Analysis* (December 9, 2015) (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

II. Present Situation:

Developmental Disabilities in Florida

Section 393.063(9), F.S., defines developmental disabilities to mean "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."

The Florida Developmental Disabilities Council estimates there are approximately 100,000 individuals living in the state who meet the developmental disability criteria.[2]

Identification Cards in Florida

Any person who is five years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit, may be issued an identification card by the DHSMV upon completion of an application and payment of a $25 fee.[3] For an original identification card the $25 fee is deposited into the General Revenue Fund. For a replacement identification card $9 is deposited into the Highway Safety Operating Trust Fund (HSOTF) or retained by the tax collector issuing the replacement, and $16 is deposited into the General Revenue Fund.[4]

An identification card issued to a person 5 to 14 years of age expires, unless canceled earlier, on the fourth birthday of the applicant following the date of original issue. An identification card issued to a person 15 years of age or older expires, unless canceled earlier, on the eighth birthday of the applicant following the date of original issue.[5]

In fiscal year 2014-2015, there were 533,584 identification cards issued statewide.[6]

Identification Cards for Persons with Developmental Disabilities

Other states have implemented Disability Identification Cards for individuals with developmental disabilities. These identification cards serve as an indicator for police and others that an individual has a developmental disability.

For example, in Illinois, the Disabled Person Identification Card is used to signify an individual has a physical, developmental, visual, hearing, or mental disability, and classifies each disability.[7] The card is able to be used as proof of a disability as well as proof of identification for the individual. In Georgia, disability symbols can be placed on a license, permit, or identification card issued by the Georgia Department of Driver Services.[8] Conditions such as

[2] DHSMV Agency Analysis, *supra* note 1.
[3] Section 322.051, F.S.
[4] Section 322.21(1)(f), F.S.
[5] Section 322.051(2)(a), F.S.
[6] Email from Department of Highway Safety and Motor Vehicles (Nov. 24, 2015) (on file with the Senate Committee on Transportation).
[7] *See* 15 ILCS 335/4a
[8] O.C.G.A. s. 40-5-171 (2010).

PTSD, Dementia, Autism, and developmental disabilities, confirmed by a medical doctor, can be indicated on the back of an individual's license, permit, or identification card.[9]

Agency for Persons with Disabilities (APD)

The APD serves over 50,000 Floridians with developmental disabilities.[10] Revenues deposited into the Operations and Maintenance Trust Fund administered by the APD consist of receipts from third-party payers of health care services, such as Medicaid.[11], These funds are used to provide services to agency clients and administer those services.[12] These services include: life skills development and job training, personal care assistance, therapeutic and wellness support, transportation services, and specialized medical assistance.

III. Effect of Proposed Changes:

The bill allows a person with a developmental disability[13], or the parent or guardian of a child or ward with a developmental disability, to voluntarily request to be issued an identification card exhibiting a "D" designation for the person who has been diagnosed by a licensed physician as having a developmental disability.

The DHSMV will issue the identification card upon proof of diagnosis of a developmental disability, acceptable to the department, and an additional fee of $10. The $10 fee will be deposited into the Operations and Maintenance Trust Fund administered by the APD. A replacement identification card that includes the "D" designation may be issued without payment of the required $25 fee. The bill requires the DHSMV to develop rules for implementing the identification card designation.

The designated identification card could help law enforcement and other officials identify if they are dealing with a developmentally disabled individual. However, it is unknown how many individuals may apply for this designated identification card.

The bill provides that the changes made to the identification card by this bill will apply upon implementation of new designs for the driver license and identification card by the DHSMV, which is currently anticipated to be in 2017[14].

This bill takes effect October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[9] Georgia Department of Driver Services, *DDs-29 Revised (3/23/2011) Form*, http://www.dds.ga.gov/docs/forms/DDS-29-12610.pdf (last visited Nov. 23, 2015).
[10] Agency for Persons with Disabilities, *About Us*, http://apd.myflorida.com/about/ (last visited Nov. 23, 2015).
[11] Section 20.1971(2)(a), F.S.
[12] Email from Agency for Persons with Disabilities, (Mar. 18, 2015) (on file with the Senate Committee on Transportation).
[13] As defined in s. 393.063, F.S.
[14] As stated in the DHSMV analysis of SB 158, (Sept. 3, 2015) (on file with the Senate Committee on Transportation).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 718, individuals requesting a "D" designation on an identification card must pay an additional $10 fee. A replacement identification card including the designation may be issued without payment of the $25 replacement fee.

Revenue from the $10 additional fee may have a minimal positive impact on clients of the APD, since the funds are deposited into its Operations and Maintenance Trust Fund for client services. However, it is unknown how many individuals may apply for an identification card with the "D" designation.

C. Government Sector Impact:

How many of the approximately 100,000 individuals living in the state who meet the developmental disability criteria that may apply for an identification card with the "D" designation is unknown. Waiver of the $25 fee for a replacement identification card will have a negative fiscal impact on the General Revenue Fund, the DHSMV's Highway Safety Operating Trust Fund and issuing county tax collectors. These impacts are indeterminate and expected to be insignificant.[15] Revenue from the $10 additional fee will have a positive fiscal impact on the APD's Operations and Maintenance Trust Fund. However, because how many individuals may apply for the "D" designated identification card is unknown, that impact is indeterminate.

VI. Technical Deficiencies:

Section 20.1971(2)(a), F.S., should be amended to specifically include the additional $10 fee collected from individuals requesting the "D" designation on an identification card as a receipt that may be credited to the Operations and Maintenance Trust Fund administered by the APD.

[15] DHSMV Agency Analysis, *supra* note 1.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 322.051 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 Transportation on December 3, 2015:
The CS adds that changes made to the identification cards by this bill will apply upon implementation of new designs for the driver license and identification card by the DHSMV.

B. Amendments:

None.

713820

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/24/2016	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 43

and insert:

(c)1. Upon request by a person who has a developmental, hearing, or visual disability, or by a parent or guardian of a child or ward who has a developmental, hearing, or visual disability, the department shall issue an identification card exhibiting a capital "D" for the person, child, or ward if the person or the parent or guardian of the child or ward submits:

713820

a. Payment of an additional $10 fee; and

b. Proof acceptable to the department of a diagnosis by a licensed physician of a developmental disability as defined in s. 393.063 or a hearing or visual disability.

2. The department shall deposit the additional $10 fee into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund under s. 20.1971(2).

3. A replacement identification card that includes the designation may be issued without payment of the fee required under s. 322.21(1)(f).

4. The department shall develop rules to facilitate the issuance, requirements, and oversight of developmental, hearing, or visual disability identification cards under this section.

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

And the title is amended as follows:

Delete lines 6 - 16

and insert:

has a developmental, hearing, or visual disability under certain circumstances; requiring payment of an additional fee and proof of diagnosis by a licensed physician; requiring the fee to be deposited into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund; authorizing issuance of a replacement identification card that includes the special designation without payment of a specified fee; requiring the department to develop rules to facilitate the issuance, requirements, and oversight of developmental, hearing, or visual disability

713820

identification cards;

210288

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment

Delete lines 31 - 35
and insert:
a. Payment of an additional $1 fee; and
b. Proof acceptable to the department of a diagnosis by a licensed physician of a developmental disability as defined in s. 393.063.
2. The department shall deposit the additional $1 fee into

By the Committee on Transportation; and Senator Sobel

596-01805-16 2016718c1

A bill to be entitled

An act relating to identification cards; amending s. 322.051, F.S.; requiring the Department of Highway Safety and Motor Vehicles to issue an identification card exhibiting a special designation for a person who has a developmental disability under certain circumstances; requiring payment of an additional fee and proof of diagnosis by a licensed physician; requiring the fee to be deposited into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund; authorizing issuance of a replacement identification card that includes the special designation without payment of a specified fee; requiring the department to develop rules to facilitate the issuance, requirements, and oversight of developmental disability identification cards; providing applicability; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (8) of section 322.051, Florida Statutes, to read:

322.051 Identification cards.—

(8)

(c)1. Upon request by a person who has a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, the department shall issue an identification card exhibiting a capital "D" for the person, child, or ward if the person or the parent or guardian of the

Florida Senate - 2016 **CS for SB 718**

596-01805-16 2016718c1

child or ward submits:

a. Payment of an additional $10 fee; and

b. Proof acceptable to the department of a diagnosis by a licensed physician of a developmental disability as defined in s. 393.063.

2. The department shall deposit the additional $10 fee into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund under s. 20.1971(2).

3. A replacement identification card that includes the designation may be issued without payment of the fee required under s. 322.21(1)(f).

4. The department shall develop rules to facilitate the issuance, requirements, and oversight of developmental disability identification cards under this section.

Section 2. The amendments made by this act to s. 322.051, Florida Statutes, shall apply upon implementation of new designs for the driver license and identification card by the Department of Highway Safety and Motor Vehicles.

Section 3. This act shall take effect October 1, 2016.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 748
INTRODUCER:	Health Policy Committee and Senator Flores
SUBJECT:	Physician Assistants
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 748 authorizes a physician assistant (PA) to perform services delegated by a supervising physician related to the PA's practice in accordance with his or her education and training unless expressly prohibited under ch. 458, ch. 459, F.S., or by rules adopted under the allopathic and osteopathic medical practice acts.

The bill creates a definition of "designated supervising physician," which means a physician designated by a facility or practice to be the primary contact and supervising physician for the PAs in a practice where PAs are supervised by multiple supervising physicians.

The bill streamlines a PA's reporting requirements to the Department of Health (DOH) with respect to multiple supervising physicians.

The bill also clarifies that a PA, with delegated prescribing authority, may use prescriptions in both paper and electronic form. The bill deletes obsolete provisions relating to PA examinations by the DOH in favor of national proficiency examinations. The bill streamlines the PA licensure and application process by eliminating the requirement for letters of recommendation and substituting acknowledgments for sworn statements that required notarization.

The bill's potential fiscal impacts on state government are indeterminate but are likely minimal.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Supervision of Physician Assistants

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the Board of Medicine (BOM). Chapter 459, F.S., sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). Physician assistants (PAs) are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.[1]

PAs are trained and required by statute to work under the supervision and control of allopathic physicians or osteopathic physicians.[2] The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[3] and indirect[4] supervision. These principles are required to recognize the diversity of both specialty and practice settings in which PAs are used.[5]

A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.[6] Each physician or group of physicians supervising a licensed PA must be qualified in the medical areas in which the PA is to perform and must be individually or collectively responsible and liable for the performance and the acts and omissions of the PA.[7]

The following duties are not permitted to be performed by a PA under indirect supervision:

- Routine insertion of chest tubes and removal of pacer wires or left atrial monitoring lines;
- Performance of a cardiac stress testing;
- Routine insertion of central venous catheters;
- Injection of intrathecal[8] medication without prior approval of the supervising physician;
- Interpretation of laboratory tests, X-ray studies and EKG's without the supervising physician's interpretation and final review;

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[1] The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a PA appointed by the State Surgeon General. (*See* ss. 458.347(9) and 459.022(9), F.S.)
[2] Sections 458.347(4) and 459.022(4), F.S.
[3] "Direct supervision" requires the physician to be on the premises and immediately available. (*See* Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).
[4] "Indirect supervision" refers to the easy availability of the supervising physician to the PA, which includes the ability to communicate by telecommunications, and requires the physician to be within reasonable physical proximity. (*See* Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.)
[5] Sections 458.347(4)(a) and 459.002(4)(a), F.S.
[6] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.
[7] Sections 458.347(3) and 459.022(3), F.S.
[8] Intrathecal means within a sheath; or through the theca of the spinal cord into the subarachnoid space. Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition. © 2003 by Saunders, an imprint of Elsevier, Inc. (last viewed Nov. 23, 2015) *available at* http://medical-dictionary.thefreedictionary.com/intrathecal.

- Administration of general, spinal, or epidural anesthetics; and then only by physician assistants who graduated from Board-approved programs for the education of anesthesiology assistants.[9]

Current law allows a supervising physician to delegate to a licensed PA the authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.[10]

Licensure of a PA requires that the PA:

- Is at least 18 years of age;
- Has graduated from an BOM- or BOOM-approved PA program[11] or its equivalent, or meets standards approved by the boards;
- Has passed a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA);
- Has completed the DOH application form[12] and remitted an application fee; and
- Has passed a criminal background check.

The PA application form requires, among other things, two letters of recommendation and sworn statements that require notarization, pertaining to prior felony convictions and any previous revocation or denial of licensure or certification in any state.

Renewal of a PA's license is biennial and contingent upon completion of certain continuing medical education requirements. A PA with delegated prescribing authority must submit a signed affidavit that he or she has completed a minimum of 10 continuing medical education hours in the specialty practice in which the PA has prescriptive privileges.[13]

Section 458.347(7)(b), F.S., contains obsolete provisions relating to PA examinations by the DOH. The DOH no longer administers a PA examination for licensure because s. 456.017(1)(c)2., F.S., prohibits a board or department to use state-developed written examinations if a national examination has been certified by the department. The current provision regarding foreign medical school trained unlicensed physicians who had not previously taken, or who had failed the NCCPA examination, but who had been certified by the BOM as

[9] Rules 64B8-30.012 and 64B15-6.010, F.A.C.
[10] Sections 458.347(4)(e) and (f)1. and 459.022(4)(e), F.S.
[11] The DOH, BOM and BOOM have delegated their responsibility to approve PA programs to the NCCPA who used the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) to accredit PA schools. The ARC-PA defines the standards for PA education and evaluating PA educational programs in the United States to ensure their compliance with those standards. The ARC-PA is an independent accrediting body and accredited programs located in institutions offering, associate, baccalaureate or master's degrees in conjunction with the PA credential awarded. *See* Accreditation Review Commission on Education for the Physician Assistants, Inc., *available at* http://www.arc-pa.com/about/index.html (last visited Nov. 6, 2015).
[12] The DOH PA licensure application must include: a certificate of completion of a specified physician assistant training program; a sworn statement of any prior felony convictions; a sworn statement of any previous revocation or denial of licensure or certification in any state; two letters of recommendation; and a copy of course transcripts and a copy of the course description from the physician assistant's training program describing course content in pharmacotherapy, if the applicant wishes to apply for prescribing authority. These documents must meet the evidence requirements for prescribing authority. See s. 458.347(7)(a)3., F.S.
[13] Sections 458.347(4)(e)3. and 459.022(4)(e)3., F.S.

having met the requirements for licensure as a medical doctor by examination, was only available from July 1, 1990 through June 30, 1991. A temporary PA license was authorized and was valid until the receipt of passing scores from the examination of the NCCPA. Furthermore, because there is no department administered examination, the timetable for notice and administration of a department administered examination is now obsolete.[14]

All licensed PAs, as a condition of practice, must also, upon employment or any subsequent change of employment, notify the DOH in writing,[15] within 30 days, with the following:

- Complete mailing address of all current practice locations; and
- The names and license numbers of all supervising physicians, the specialties of supervising physicians, and the date or dates supervision began.[16]

Additionally, any subsequent change in the supervising physician must be communicated in writing to the DOH within 30 days after the change.

Board rules[17] define a primary supervising physician as a physician licensed pursuant to ch. 458 or ch. 459, F.S., who assumes responsibility and legal liability for the services rendered by the PA at all times and the PA is not under the supervision and control of an alternate supervising physician. An alternate supervising physician is defined as physician(s) licensed pursuant to ch. 458 or ch. 459, F.S., who assume responsibility and legal liability for the services rendered by the PA while the PA is under his or her supervision and control. A physician may not supervise more than four licensed physician assistants at any one time.[18]

Section 458.347(4)(e)5., F.S., and s. 459.022(4)(e)5., F.S., dealing with delegated prescribing authority, allow for the use of prescriptions in written form only.

III. Effect of Proposed Changes:

This bill amends the virtually identical provisions relating to physician assistants (PAs) in both the Medical Practice Act, ch.458, F.S., and the Osteopathic Medical Practice Act, ch. 459, F.S.

Affirmative Delegation Authority

The bill authorizes a PA to perform services delegated by the supervising physician in the PA's practice in accordance with his or her education and training unless expressly prohibited under ch. 458, F.S., ch. 459, F.S., or by rules adopted under either chapter.

[14] *See* the Florida Dep't of Health, *House Bill 375 Analysis*, p. 3 (Oct. 27, 2015) (on file with the Senate Committee on Health Policy).
[15] Florida Dep't of Health, Form DH-MQA 2004, *Supervision Data Form* (rev. Aug. 2010) *available at* http://flboardofmedicine.gov/forms/frm_supervisiondata.pdf (last viewed Nov. 23, 2015).
[16] Sections 458.347(7)(e) and 459.022(7)(d), F.S., and Rules 64B15-6.003 and 64B8-30.003, F.A.C.
[17] Rules 64B8-30.001 and 64B15-6.001, F.A.C.
[18] Sections 458.347(3) and 459.022(3), F.S.

Designated Supervising Physician

The bill amends s. 458.347(4)(e)5, F.S., and s. 459.002(4)(e)5., F.S., to create and define a new type of supervising physician for PAs, the "designated supervising physician." The bill gives a PA a choice of whether to report his or her supervising physician(s) or the designated supervising physician for employment by a facility or practice. If the PA chooses the option of reporting only the designated supervising physician, a PA would no longer be required to report changes in physicians who actually supervise the PA in a facility or practice within 30 days of the changes. Any changes to the designated supervising physicians must be reported to the DOH within 30 days of the change.

Current law limits the number of PAs a physician my supervise at one time to four.[19,20] Under the bill, in order for the DOH to obtain that information, the DOH is required to make a written request to the facility's or practice's designated supervising physician for a list which must contain the names of all supervising physicians along with each supervising physician's practice area and be up-to-date with respect to additions and terminations of physicians. It does not require the designated supervising physician to include in the list which physicians supervised which PAs at which facility or location on a daily basis. There are also no sanctions in the bill for not maintaining the list, not keeping it up-to-date, or not providing it to the DOH in a timely manner. General disciplinary provisions in s. 458.072, F.S., and s. 459.015, F.S., however, might be applicable.

Form of Prescription

The bill amends s. 458.347(4)(e)5., F.S., and s. 459.022(4)(e)5., F.S., to clarify that a PA, with delegated prescribing authority, may use prescriptions in both paper and electronic form. The prescription must comply with provisions in s. 456.0392(1), F.S., s. 456.42(1), F.S., and ch. 499, which require identification of the PA, i.e., name and prescriber number, and other essential elements for dispensing such as name and address of the patient, name and strength of the drug, quantity prescribed, directions for use, date prescribed, and the prescriber's signature.

Licensure Efficiencies

The bill amends s. 458.347(7)(a), F.S., and s.459.022(7)(a)., F.S., to streamline and simplify the PA licensure and application process by eliminating the requirement for two letters of recommendation and substituting acknowledgments for sworn statements that required notarization pertaining to continuing medical education, prior felony convictions, and certain regulatory actions for licensure or certification in any state.

The bill deletes obsolete provisions relating to PA examinations by the DOH in favor of national proficiency examinations. This language appears only in the Medical Practice Act in s. 458.347(7)(b), F.S.

[19] Section 458.347(3), F.S.
[20] Section 459.022(3), F.S.

Effective Date

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 748, applicants for licensure as a PA, and PAs renewing their licenses, will experience reduced costs and time savings due to the administrative efficiencies.

Physician Assistants may also avoid disciplinary action for missing the filing deadlines, whether intentionally or unintentionally, when changes in supervising physicians occur.

C. Government Sector Impact:

The Department of Health and medical boards may experience fewer investigations and probable cause hearings with fewer complaints relating to PAs missing filing deadlines associated with changes in supervising physicians, which could lead to some level of cost savings. However, additional efforts may be required to monitor responsibilities of the designated supervising physician. Any resulting fiscal impacts, if any, are indeterminate at this time but are likely minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.347 and 459.022.

IX. Additional Information:

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

CS by Health Policy on December 1, 2015:
Provides that a PA may perform services that are delegated by the supervising physician in accordance with his or her education and training, unless expressly prohibited by law; provides that prescriptions may be in paper or electronic form; reinstates the requirement that prescriptions comply with ch. 499, F.S.; and removes the provision for designated supervising physicians to be "approved."

B. Amendments.

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Flores) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 216 - 241.

====== 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 37
and insert:
and present paragraphs (a), (b), (c), and (f) of that

238882

11 ================= T I T L E A M E N D M E N T ================
12 And the title is amended as follows:
13 Delete lines 11 - 16
14 and insert:
15 amending s. 459.022,

303878

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Flores) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 364 - 388.

====== 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 274
and insert:
that subsection, and paragraphs (a) and (b) of subsection

303878

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 23 - 29
and insert:
letters of recommendation; providing an effective date.

By the Committee on Health Policy; and Senator Flores

588-01772A-16 2016748c1

A bill to be entitled

An act relating to physician assistants; amending s. 458.347, F.S.; revising circumstances under which a physician assistant may prescribe medication; authorizing a licensed physician assistant to perform certain services as delegated by a supervising physician; revising physician assistant licensure and license renewal requirements; removing a requirement for letters of recommendation; deleting provisions related to examination by the Department of Health; defining the term "designated supervising physician"; requiring licensed physician assistants to report any changes in the designated supervising physician within a specified time; requiring a designated supervising physician to maintain a list of supervising physicians at the practice or facility; amending s. 459.022, F.S.; revising circumstances under which a physician assistant may prescribe medication; authorizing a licensed physician assistant to perform certain services as delegated by a supervising physician; revising physician assistant licensure and license renewal requirements; removing a requirement for letters of recommendation; defining the term "designated supervising physician"; requiring licensed physician assistants to report any changes in the designated supervising physician within a specified time; requiring a designated supervising physician to maintain a list of supervising physicians at the practice or facility; providing an effective date.

588-01772A-16 2016748c1

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

Section 1. Paragraph (e) of subsection (4) of section 458.347, Florida Statutes, is amended, paragraph (h) is added to that subsection, paragraphs (c) through (h) of subsection (7) are redesignated as paragraphs (b) through (g), respectively, and present paragraphs (a), (b), (c), (e), and (f) of that subsection are amended, to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervising ~~supervisory~~ physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervising ~~supervisory~~ physician's practice unless such medication is listed on the formulary created pursuant to paragraph (f). A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that he or she is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician before ~~prior to~~ any prescription is ~~being~~ prescribed or dispensed by the physician assistant.

2. The supervising ~~supervisory~~ physician must notify the department of his or her intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only

by a supervising physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must acknowledge with ~~file with~~ the department ~~a signed affidavit~~ that he or she has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application.

4. The department may issue a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant shall not be required to independently register pursuant to s. 465.0276.

5. The prescription may ~~must~~ be ~~written~~ in paper or electronic ~~a~~ form but must comply ~~that complies~~ with ss. 456.0392(1) and 456.42(1) and chapter 499 and must contain, in addition to the supervising ~~supervisory~~ physician's name, address, and telephone number, the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465 and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

(h) A licensed physician assistant may perform services delegated by the supervising physician in the physician assistant's practice in accordance with his or her education and

training unless expressly prohibited under this chapter, chapter 459, or rules adopted under this chapter or chapter 459.

(7) PHYSICIAN ASSISTANT LICENSURE.—

(a) Any person desiring to be licensed as a physician assistant must apply to the department. The department shall issue a license to any person certified by the council as having met the following requirements:

1. Is at least 18 years of age.

2. Has satisfactorily passed a proficiency examination by an acceptable score established by the National Commission on Certification of Physician Assistants. If an applicant does not hold a current certificate issued by the National Commission on Certification of Physician Assistants and has not actively practiced as a physician assistant within the immediately preceding 4 years, the applicant must retake and successfully complete the entry-level examination of the National Commission on Certification of Physician Assistants to be eligible for licensure.

3. Has completed the application form and remitted an application fee not to exceed $300 as set by the boards. An application for licensure made by a physician assistant must include:

a. A certificate of completion of a physician assistant training program specified in subsection (6).

b. Acknowledgment ~~A sworn statement~~ of any prior felony convictions.

c. Acknowledgment ~~A sworn statement~~ of any previous revocation or denial of licensure or certification in any state.

d. ~~Two letters of recommendation.~~

~~e.~~ A copy of course transcripts and a copy of the course description from a physician assistant training program describing course content in pharmacotherapy, if the applicant wishes to apply for prescribing authority. These documents must meet the evidence requirements for prescribing authority.

(b) ~~1. Notwithstanding subparagraph (a)2. and sub-subparagraph (a)3.a., the department shall examine each applicant who the Board of Medicine certifies:~~

~~a. Has completed the application form and remitted a nonrefundable application fee not to exceed $500 and an examination fee not to exceed $300, plus the actual cost to the department to provide the examination. The examination fee is refundable if the applicant is found to be ineligible to take the examination. The department shall not require the applicant to pass a separate practical component of the examination. For examinations given after July 1, 1998, competencies measured through practical examinations shall be incorporated into the written examination through a multiple-choice format. The department shall translate the examination into the native language of any applicant who requests and agrees to pay all costs of such translation, provided that the translation request is filed with the board office no later than 9 months before the scheduled examination and the applicant remits translation fees as specified by the department no later than 6 months before the scheduled examination, and provided that the applicant demonstrates to the department the ability to communicate orally in basic English. If the applicant is unable to pay translation costs, the applicant may take the next available examination in English if the applicant submits a request in writing by the application deadline and if the applicant is otherwise eligible under this section. To demonstrate the ability to communicate orally in basic English, a passing score or grade is required, as determined by the department or organization that developed it, on the test for spoken English (TSE) by the Educational Testing Service (ETS), the test of English as a foreign language (TOEFL) by ETS, a high school or college level English course, or the English examination for citizenship, Bureau of Citizenship and Immigration Services. A notarized copy of an Educational Commission for Foreign Medical Graduates (ECFMG) certificate may also be used to demonstrate the ability to communicate in basic English; and~~

~~b. Is an unlicensed physician who graduated from a foreign medical school listed with the World Health Organization who has not previously taken and failed the examination of the National Commission on Certification of Physician Assistants and who has been certified by the Board of Medicine as having met the requirements for licensure as a medical doctor by examination as set forth in s. 458.311(1), (3), (4), and (5), with the exception that the applicant is not required to have completed an approved residency of at least 1 year and the applicant is not required to have passed the licensing examination specified under s. 458.311 or hold a valid, active certificate issued by the Educational Commission for Foreign Medical Graduates; was eligible and made initial application for certification as a physician assistant in this state between July 1, 1990, and June 30, 1991; and was a resident of this state on July 1, 1990, or was licensed or certified in any state in the United States as a physician assistant on July 1, 1990.~~

~~2. The department may grant temporary licensure to an applicant who meets the requirements of subparagraph 1. Between meetings of the council, the department may grant temporary licensure to practice based on the completion of all temporary licensure requirements. All such administratively issued licenses shall be reviewed and acted on at the next regular meeting of the council. A temporary license expires 30 days after receipt and notice of scores to the licenseholder from the first available examination specified in subparagraph 1. following licensure by the department. An applicant who fails the proficiency examination is no longer temporarily licensed, but may apply for a one-time extension of temporary licensure after reapplying for the next available examination. Extended licensure shall expire upon failure of the licenseholder to sit for the next available examination or upon receipt and notice of scores to the licenseholder from such examination.~~

~~3. Notwithstanding any other provision of law, the examination specified pursuant to subparagraph 1. shall be administered by the department only five times. Applicants certified by the board for examination shall receive at least 6 months' notice of eligibility prior to the administration of the initial examination. Subsequent examinations shall be administered at 1-year intervals following the reporting of the scores of the first and subsequent examinations. For the purposes of this paragraph, the department may develop, contract for the development of, purchase, or approve an examination that adequately measures an applicant's ability to practice with reasonable skill and safety. The minimum passing score on the examination shall be established by the department, with the~~

~~advice of the board. Those applicants failing to pass that examination or any subsequent examination shall receive notice of the administration of the next examination with the notice of scores following such examination. Any applicant who passes the examination and meets the requirements of this section shall be licensed as a physician assistant with all rights defined thereby.~~

~~(c)~~ The license must be renewed biennially. Each renewal must include:

1. A renewal fee not to exceed $500 as set by the boards.

2. Acknowledgment ~~A sworn statement~~ of no felony convictions in the previous 2 years.

(d)1.~~(c)~~ Upon employment as a physician assistant, a licensed physician assistant must notify the department in writing within 30 days after such employment or after any subsequent change ~~changes~~ in the supervising physician or the designated supervising physician. The notification must include the full name, Florida medical license number, specialty, and address of the supervising physician or the designated supervising physician. For purposes of this paragraph, the term "designated supervising physician" means a physician designated by the facility or practice to be the primary contact and supervising physician for the physician assistants in a practice where physician assistants are supervised by multiple supervising physicians.

2. A licensed physician assistant shall notify the department of any subsequent change in the designated supervising physician within 30 days after the change. Assignment of a designated supervising physician does not

preclude a physician assistant from practicing under the supervision of a physician other than the designated supervising physician.

3. The designated supervising physician shall maintain a list of all supervising physicians at the practice or facility. Such list must include the name of each supervising physician and his or her area of practice, must be kept up to date with respect to additions and terminations, and must be provided, in a timely manner, to the department upon written request.

(e)~~(f)~~ Notwithstanding subparagraph (a)2., the department may grant to a recent graduate of an approved program, as specified in subsection (6), who expects to take the first examination administered by the National Commission on Certification of Physician Assistants available for registration after the applicant's graduation, a temporary license. The temporary license shall expire 30 days after receipt of scores of the proficiency examination administered by the National Commission on Certification of Physician Assistants. Between meetings of the council, the department may grant a temporary license to practice based on the completion of all temporary licensure requirements. All such administratively issued licenses shall be reviewed and acted on at the next regular meeting of the council. The recent graduate may be licensed before ~~prior to~~ employment~~,~~ but must comply with paragraph (d) ~~(c)~~. An applicant who has passed the proficiency examination may be granted permanent licensure. An applicant failing the proficiency examination is no longer temporarily licensed~~,~~ but may reapply for a 1-year extension of temporary licensure. An applicant may not be granted more than two temporary licenses

and may not be licensed as a physician assistant until he or she passes the examination administered by the National Commission on Certification of Physician Assistants. As prescribed by board rule, the council may require an applicant who does not pass the licensing examination after five or more attempts to complete additional remedial education or training. The council shall prescribe the additional requirements in a manner that permits the applicant to complete the requirements and be reexamined within 2 years after the date the applicant petitions the council to retake the examination a sixth or subsequent time.

Section 2. Paragraph (e) of subsection (4) of section 459.022, Florida Statutes, is amended, paragraph (g) is added to that subsection, and paragraphs (a), (b), and (d) of subsection (7) of that section are amended, to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervising ~~supervisory~~ physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervising ~~supervisory~~ physician's practice unless such medication is listed on the formulary created pursuant to s. 458.347. A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that she or he is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician before ~~prior to~~ any prescription is ~~being~~ prescribed or dispensed by the physician assistant.

2. The supervising ~~supervisory~~ physician must notify the department of her or his intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervising ~~supervisory~~ physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must acknowledge with ~~file with~~ the department ~~a signed affidavit~~ that she or he has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application.

4. The department may issue a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant shall not be required to independently register pursuant to s. 465.0276.

5. The prescription may ~~must~~ be ~~written~~ in paper or electronic ~~a~~ form but must comply ~~that complies~~ with ss. 456.0392(1) and 456.42(1) and chapter 499 and must contain, in addition to the supervising ~~supervisory~~ physician's name, address, and telephone number, the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465, and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

(g) A licensed physician assistant may perform services delegated by the supervising physician in the physician assistant's practice in accordance with his or her education and training unless expressly prohibited under this chapter, chapter 458, or rules adopted under this chapter or chapter 458.

(7) PHYSICIAN ASSISTANT LICENSURE.—

(a) Any person desiring to be licensed as a physician assistant must apply to the department. The department shall issue a license to any person certified by the council as having met the following requirements:

1. Is at least 18 years of age.

2. Has satisfactorily passed a proficiency examination by an acceptable score established by the National Commission on Certification of Physician Assistants. If an applicant does not hold a current certificate issued by the National Commission on Certification of Physician Assistants and has not actively practiced as a physician assistant within the immediately preceding 4 years, the applicant must retake and successfully complete the entry-level examination of the National Commission on Certification of Physician Assistants to be eligible for licensure.

3. Has completed the application form and remitted an application fee not to exceed $300 as set by the boards. An application for licensure made by a physician assistant must include:

a. A certificate of completion of a physician assistant training program specified in subsection (6).

b. Acknowledgment ~~A sworn statement~~ of any prior felony convictions.

c. Acknowledgment ~~A sworn statement~~ of any previous revocation or denial of licensure or certification in any state.

d. ~~Two letters of recommendation.~~

~~e.~~ A copy of course transcripts and a copy of the course description from a physician assistant training program describing course content in pharmacotherapy, if the applicant wishes to apply for prescribing authority. These documents must meet the evidence requirements for prescribing authority.

(b) The licensure must be renewed biennially. Each renewal must include:

1. A renewal fee not to exceed $500 as set by the boards.

2. Acknowledgment ~~A sworn statement~~ of no felony convictions in the previous 2 years.

(d)1. Upon employment as a physician assistant, a licensed physician assistant must notify the department in writing within 30 days after such employment or after any subsequent changes in the supervising physician or the designated supervising physician. The notification must include the full name, Florida medical license number, specialty, and address of the supervising physician or the designated supervising physician. For purposes of this paragraph, the term "designated supervising physician" means a physician designated by the facility or practice to be the primary contact and supervising physician for the physician assistants in a practice where physician assistants are supervised by multiple supervising physicians.

2. A licensed physician assistant shall notify the department of any subsequent change in the designated

supervising physician within 30 days after the change. Assignment of a designated supervising physician does not preclude a physician assistant from practicing under the supervision of a physician other than the designated supervising physician.

3. The designated supervising physician shall maintain a list of all supervising physicians at the practice or facility. Such list must include the name of each supervising physician and his or her area of practice, must be kept up to date with respect to additions and terminations, and must be provided, in a timely manner, to the department upon written request.

Section 3. This act shall take effect July 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 Appropriations Subcommittee

BILL:	SB 850
INTRODUCER:	Senator Bradley
SUBJECT:	Offenses Concerning Racketeering and Illegal Debts
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.	Clodfelter	Sadberry	ACJ	**Recommend: Favorable**
3.	Clodfelter	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 850 amends civil enforcement provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Major features of the bill include:

- Authorizing an investigative agency, on behalf of the state, to institute a RICO civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property is located or in a circuit court in the state for intangible property;
- Authorizing an investigative agency to pursue an action to recover fair market value of unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture;
- Authorizing a court to order the forfeiture of any other property of a defendant up to the value of the property subject to forfeiture (as an alternative to the court ordering an amount equal to the fair market value of the unavailable property);
- Authorizing the Department of Legal Affairs to bring an action for a Florida RICO Act violation to obtain injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any action under the Florida RICO Act;
- Providing that a natural person who violates the Florida RICO Act may be subject to a civil penalty of up to $100,000 and any other person who violates the act may be subject to a civil penalty of up to $1 million, and requiring that moneys recovered for such civil penalties be deposited into the General Revenue Fund;
- Requiring that moneys recovered by the Department of Legal Affairs for attorney fees and costs under the Florida Rico Act be deposited into the Legal Affairs Revolving Trust Fund and authorizing use of those funds to investigate Florida RICO Act violations and enforce the act;
- Authorizing any party to a Florida RICO Act civil action to petition the court for entry of a consent decree or for approval of a settlement agreement;

- Providing that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless extended by the court upon a showing of good cause by the investigating agency;
- Providing that the list of claims for which a court directs distribution of forfeiture funds includes claims for restitution by RICO victims; and
- Providing that where the forfeiture action was brought by the Department of Legal Affairs, the restitution is distributed through the Legal Affairs Trust Fund (otherwise, the restitution is distributed by the clerk of the circuit court).

The Department of Legal Affairs indicates that the new civil penalties for Florida RICO Act violations may have an indeterminate positive revenue impact on the General Revenue Fund. Changes regarding recovery of the value of property subject to forfeiture that has become unavailable may also increase forfeiture proceeds by an indeterminate amount.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Florida RICO Act

The "Florida RICO Act" is the short title for ss. 895.01-895.06, F.S. "Racketeering activity" means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.[1] Section 895.03, F.S., punishes as a first degree felony:

- With criminal intent receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity[2] or through the collection of an unlawful debt[3] to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;[4]
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;

[1] Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as "racketeering activity" under 18 U.S.C. § 1961(1).
[2] "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five years after a prior incident of racketeering conduct. Section 895.02(4), F.S.
[3] An "unlawful debt" is any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any law listed in the definition. Section 895.02(2), F.S. These offenses include violations of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.
[4] An "enterprise" is any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity. The definition includes: illicit as well as licit enterprises; governmental, as well as other, entities; and a criminal gang, as defined in s. 874.03, F.S. Section 895.02(3), F.S.

- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.[5]

In addition to criminal penalties, the Florida RICO Act imposes civil liability for violations of the act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.[6]

Recovery of Property Unavailable for Forfeiture

Section 895.05, F.S., provides that if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice[7] or after the filing of a civil or criminal proceeding pursuant to the act, whichever is earlier, an investigative agency may institute an action to recover an amount equal to the fair market value of the property, together with investigative costs and attorney's fees incurred by the investigative agency in the action.[8] "[I]f a defendant conveys or otherwise disposes of property subject to forfeiture before the filing of a civil RICO action or the filing of a RICO lien notice, or if the property's value has been diminished, no money judgment can be obtained against the defendant for the dissipated or devalued property and the property in question cannot be forfeited."[9]

Investigative Subpoenas

Section 895.06, F.S., provides that an investigating agency may subpoena witnesses or materials during the course of a civil enforcement investigation. "The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred."[10] An investigative agency may apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena for a period of 90 days to anyone except the attorney for the subpoenaed person or entity.[11] The 90-day time limit may be extended by the court for good cause shown by the investigative agency.[12]

[5] Section 895.03(1)-(4), F.S. (prohibited activities).
[6] Section 895.05(2), F.S.
[7] An investigative agency may file a RICO lien notice in the county records when it initiates a civil proceeding. The RICO lien notice creates a lien in favor of the state on the real property or beneficial interest situated in the county where the lien is filed. Section 895.07, F.S. An "investigative agency" is the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney. Section 895.02(7), F.S.
[8] Section 895.05(2), F.S.
[9] Analysis of SB 850 (January 20, 2016), Department of Legal Affairs (on file with the Senate Committee on Criminal Justice). This analysis is cited hereafter as "Department of Legal Affairs Analysis."
[10] *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001).
[11] Section 895.06(3), F.S. "Investigative subpoenas issued by the enforcement agency can be disclosed unless the agency obtains a court order preventing disclosure of the subpoena for 90 days." Department of Legal Affairs Analysis.
[12] *Id.*

Omissions Relevant to Civil Enforcement

Current law does not:

- Specify where an action may be filed if personal property involved in a Florida RICO Act violation is subject to forfeiture;
- Address civil penalties in a Florida RICO Act enforcement action;
- Address consent decrees or settlement agreements in civil actions for Florida RICO Act violations; and
- Authorize restitution to RICO victims.

Public Records Exemption

In 2015, the Legislature created s. 895.06(7), F.S.[13] Section 895.06(7)(a), F.S., provides that information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to a government entity in the performance of its official duties and to a court or tribunal.[14] This information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.[15] An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.[16]

III. Effect of Proposed Changes:

The bill amends civil enforcement provisions of the Florida RICO Act to:

- Authorize an investigative agency, on behalf of the state, to institute a RICO civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property[17] is located, or in a circuit court in the state for intangible property;[18]
- Authorize an investigative agency to pursue an action to recover fair market value of unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture;
- Authorize a court to order the forfeiture of any other property of the defendant up to the value of the unavailable property (as an alternative to the court ordering forfeiture of an amount equal to the fair market value of the unavailable property);
- Authorize the Department of Legal Affairs to bring an action for a Florida RICO Act violation to obtain injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any action under the Florida RICO Act;

[13] Ch. 2015-99, L.O.F.
[14] Section 895.06(7)(b), F.S.
[15] Section 895.06(7)(c), F.S.
[16] Section 895.06(7)(d), F.S.
[17] The bill states that the terms "real or personal tangible property" and "intangible property" are described in s. 895.05(2)(a), F.S. This paragraph states that all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01-895.05, F.S., is subject to civil forfeiture to the state.
[18] *Id.*

- Provide that a natural person who violates the Florida RICO Act may be subject to a civil penalty of up to $100,000 and any other person who violates the act may be subject to a civil penalty of up to $1 million and require that moneys recovered for civil penalties be deposited into the General Revenue Fund;
- Require that moneys recovered by the Department of Legal Affairs for attorney fees and costs under the Florida Rico Act be deposited into the Legal Affairs Revolving Trust Fund and authorize use of those funds to investigate Florida RICO Act violations and enforce the act;
- Authorize any party to a Florida RICO Act civil action to petition the court for entry of a consent decree or for approval of a settlement agreement;
- Require that the proposed decree or settlement specify the alleged violations, the future obligations of the parties, the relief agreed upon, and the reasons for entering into the consent decree or settlement agreement;
- Provide that current law relating to the suspension of the running of the period of limitations with respect to certain causes of action will apply to actions for injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any Florida RICO Act violation;[19]
- Provide that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless the period is extended by the court upon a showing of good cause by the investigating agency;
- Prohibit a subpoenaed person or entity from disclosing the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity during the 120-day period;
- Require that the subpoena include a reference to the confidentiality of the subpoena and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity is prohibited;
- Authorize an investigative agency to stipulate to protective orders with respect to documents and information submitted in response to an investigative subpoena;
- Provide that the list of claims for which a court directs distribution of forfeiture funds includes claims for restitution by RICO victims; and
- Provide that if the forfeiture action was brought by the Department of Legal Affairs, the restitution is distributed through the Legal Affairs Trust Fund (otherwise, the restitution is distributed by the clerk of the court).

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[19] A criminal or civil action or proceeding under the Florida RICO Act may be commenced at any time within five years after the conduct in violation of the act terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the act, the running of the period of limitations prescribed with respect to certain causes of action (e.g., an action for damages brought by the state) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding is suspended during the pendency of such prosecution, action, or proceeding and for two years following its termination. Section 895.05(10), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Legal Affairs, "[t]he civil penalties of up to $100,000 for a natural person and up to $1 million for any other person for RICO Act violations created by [SB 850] may have an indeterminate positive revenue impact on the General Revenue Fund."[20] Changes regarding recovery of the value of property subject to forfeiture that has become unavailable may also increase forfeiture proceeds by an indeterminate amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 16.53, 16.56, 895.05, 895.06, 895.09, and 905.34, Florida Statutes.

This bill reenacts provisions of the sections 16.53, 27.345, and 92.142, Florida Statutes to incorporate the amendment made to section 895.05, Florida Statutes, in references to that statute.

[20] Department of Legal Affairs Analysis, *supra* note 9.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Bradley

7-01019-16 2016850__

A bill to be entitled

An act relating to offenses concerning racketeering and illegal debts; reordering and amending s. 895.02, F.S.; specifying the earliest date that incidents constituting a pattern of racketeering activity may have occurred; conforming a cross-reference; amending s. 895.05, F.S.; authorizing an investigative agency to institute a civil proceeding for forfeiture in a circuit court in certain circumstances; adding diminution in value as a ground for an action under certain circumstances; removing certain grounds for an action; authorizing a court to order the forfeiture of other property of the defendant up to the value of unavailable property in certain circumstances; authorizing the Department of Legal Affairs to bring an action for certain violations to obtain specified relief, fees, and costs for certain purposes; providing for civil penalties for natural persons and other persons who commit certain violations; providing for deposit of moneys received for certain violations; authorizing a party to a specific civil action to petition the court for entry of a consent decree or for approval of a settlement agreement; providing requirements for such decrees or agreements; amending s. 895.06, F.S.; deleting the definition of "investigative agency" for purposes of provisions relating to civil investigative subpoenas; providing that a subpoena must be confidential for a specified time; restricting to whom the subpoenaed person or

7-01019-16 2016850__

entity may disclose the existence of the subpoena; requiring certain information be included in the subpoena; authorizing the investigative agency to apply for an order extending the amount of time the subpoena remains confidential rather than having it extended by the court for a specified period; providing that the investigative agency has the authority to stipulate to protective orders with respect to documents and information submitted in response to a subpoena; amending s. 895.09, F.S.; conforming a cross-reference; providing for distribution of forfeiture proceeds to victims; amending ss. 16.56 and 905.34, F.S.; conforming cross-references; amending s. 16.53, F.S., and reenacting subsection (4) and paragraph (5)(a), relating to the Legal Affairs Revolving Trust Fund, to incorporate the amendment made by the act to s. 895.05, F.S., a reference thereto; conforming a cross-reference; reenacting ss. 27.345(1) and 92.142(3), F.S., relating to the State Attorney RICO Trust Fund and witness pay, respectively, to incorporate the amendment made by the act to s. 895.05, F.S., in references thereto; providing an effective date.

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

Section 1. Section 895.02, Florida Statutes, is reordered and amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8)~~(1)~~ "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1).

(12) ~~(2)~~ "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following provisions of law:

1. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

2. Chapter 550, relating to jai alai frontons.

3. Section 551.109, relating to slot machine gaming.

4. Chapter 687, relating to interest and usury.

5. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

(5)~~(3)~~ "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang, as defined in s. 874.03, constitutes an enterprise.

(7)~~(4)~~ "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after October 1, 1977, ~~the effective date of this act~~ and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

(4)~~(5)~~ "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(10)~~(6)~~ "RICO lien notice" means the notice described in s. 895.05(13) ~~s. 895.05(12)~~ or in s. 895.07.

(6)~~(7)~~ "Investigative agency" means the Department of Legal

Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

(1)~~(8)~~ "Beneficial interest" means any of the following:

(a) The interest of a person as a beneficiary under a trust established pursuant to s. 689.07 or s. 689.071 in which the trustee for the trust holds legal or record title to real property;

(b) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(c) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(9) "Real property" means any real property or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(11)~~(10)~~ "Trustee" means any of the following:

(a) Any person acting as trustee pursuant to a trust established under s. 689.07 or s. 689.071 in which the trustee holds legal or record title to real property.

(b) Any person who holds legal or record title to real

property in which any other person has a beneficial interest.

(c) Any successor trustee or trustees to any or all of the foregoing persons.

However, the term "trustee" does not include any person appointed or acting as a personal representative as defined in s. 731.201 or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(3) ~~(11)~~ "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under s. 895.03 or any other provision of the Florida RICO Act.

(2) ~~(12)~~ "Civil proceeding" means any civil proceeding commenced by an investigative agency under s. 895.05 or any other provision of the Florida RICO Act.

Section 2. Subsections (2), (5), and (8) through (12) of section 895.05, Florida Statutes, are amended to read:

895.05 Civil remedies.—

(2)(a) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05 is subject to civil forfeiture to the state.

(b) An investigative agency may, on behalf of the state, institute a civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property, as described in paragraph (a), is located. An investigative agency may, on behalf of the state, institute a civil proceeding for forfeiture in a circuit court in the state

regarding intangible property as described in paragraph (a).

(c) Upon the entry of a final judgment of forfeiture in favor of the state, the title of the state to the forfeited property shall relate back:

1. In the case of real property or a beneficial interest, to the date of filing of the RICO lien notice in the official records of the county where the real property or beneficial trust is located; if no RICO lien notice is filed, then to the date of the filing of any notice of lis pendens under s. 895.07(5)(a) in the official records of the county where the real property or beneficial interest is located; and if no RICO lien notice or notice of lis pendens is filed, then to the date of recording of the final judgment of forfeiture in the official records of the county where the real property or beneficial interest is located.

2. In the case of personal property, to the date the personal property was seized by the investigating agency.

(d) If property subject to forfeiture is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture ~~after the filing of a RICO lien notice or after the filing of a civil proceeding or criminal proceeding, whichever is earlier~~, the investigative agency may, on behalf of the state, institute an action in any circuit court against the person named in the RICO lien notice or the defendant in the civil proceeding or criminal proceeding, and the court shall enter final judgment against the person named in the RICO lien notice or the defendant in the civil proceeding or criminal proceeding in an amount equal to the fair market value of the property, together with investigative costs

and attorney ~~attorney's~~ fees incurred by the investigative agency in the action. As an alternative, the court may order the forfeiture of any other property of a defendant up to the value of the property subject to forfeiture. If a civil proceeding is pending, such action shall be filed only in the court where the civil proceeding is pending.

(e)~~(c)~~ The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The proceeds realized from such forfeiture and disposition shall be promptly distributed in accordance with the provisions of s. 895.09.

(5) The Department of Legal Affairs, any state attorney, or any state agency having jurisdiction over conduct in violation of a provision of this chapter ~~act~~ may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(8) A final judgment or decree rendered in favor of the state in any criminal proceeding under this chapter ~~act~~ or any other criminal proceeding under state law shall estop the defendant in any subsequent civil action or proceeding under this chapter ~~act~~ or under s. 772.104 as to all matters as to

which such judgment or decree would be an estoppel as between the parties.

(9) The Department of Legal Affairs may bring an action for a violation of s. 895.03 to obtain injunctive relief, civil penalties as provided in this subsection, attorney fees, and costs incurred in the investigation and prosecution of any action under this chapter.

(a) A natural person who violates s. 895.03 is subject to a civil penalty of up to $100,000. Any other person who violates s. 895.03 is subject to a civil penalty of up to $1 million. Moneys recovered for civil penalties under this paragraph shall be deposited into the General Revenue Fund.

(b) Moneys recovered by the Department of Legal Affairs for attorney fees and costs under this subsection shall be deposited into the Legal Affairs Revolving Trust Fund, which may be used to investigate and enforce this chapter.

(c) In a civil action brought under this subsection by the Department of Legal Affairs, any party to such action may petition the court for entry of a consent decree or for approval of a settlement agreement. The proposed decree or settlement shall specify the alleged violations, the future obligations of the parties, the relief agreed upon, and the reasons for entering into the consent decree or settlement agreement.

(10)~~(9)~~ The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if it certifies that, in its opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal

Affairs had instituted the action or proceeding.

(11)~~(10)~~ Notwithstanding any other provision of law, a criminal or civil action or proceeding under this chapter ~~act~~ may be commenced at any time within 5 years after the conduct in violation of ~~a provision of~~ this chapter ~~act~~ terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of ~~the provisions of~~ this chapter ~~act~~, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6), ~~or~~ subsection (7), or subsection (9) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for 2 years following its termination.

(12)~~(11)~~ The application of one civil remedy under any provision of this chapter ~~act~~ does not preclude the application of any other remedy, civil or criminal, under this chapter ~~act~~ or any other provision of law. Civil remedies under this chapter ~~act~~ are supplemental, and not mutually exclusive.

(13)~~(12)~~(a) In addition to the authority to file a RICO lien notice set forth in s. 895.07(1), the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney may apply ex parte to a criminal division of a circuit court and, upon petition supported by sworn affidavit, obtain an order authorizing the filing of a RICO lien notice against real property upon a showing of probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through

conduct in violation of ~~a provision of~~ ss. 895.01-895.05. If the lien notice authorization is granted, the department shall, after filing the lien notice, forthwith provide notice to the owner of the property by one of the following methods:

1. By serving the notice in the manner provided by law for the service of process.

2. By mailing the notice, postage prepaid, by ~~registered or~~ certified mail to the person to be served at his or her last known address and evidence of the delivery.

3. If neither of the foregoing can be accomplished, by posting the notice on the premises.

(b) The owner of the property may move the court to discharge the lien, and such motion shall be set for hearing at the earliest possible time.

(c) The court shall discharge the lien if it finds that there is no probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05 or if it finds that the owner of the property neither knew nor reasonably should have known that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05.

(d) No testimony presented by the owner of the property at the hearing is admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury or false statement, nor shall such testimony constitute a waiver of the owner's constitutional right against self-incrimination.

(e) A lien notice secured under ~~the provisions of~~ this

subsection is valid for a period of 90 days from the date the court granted authorization, which period may be extended for an additional 90 days by the court for good cause shown, unless a civil proceeding is instituted under this section and a lien notice is filed under s. 895.07, in which event the term of the lien notice is governed by s. 895.08.

(f) The filing of a lien notice, whether or not subsequently discharged or otherwise lifted, shall constitute notice to the owner and knowledge by the owner that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ~~a provision of~~ ss. 895.01-895.05, such that lack of such notice and knowledge shall not be a defense in any subsequent civil or criminal proceeding under this chapter.

Section 3. Section 895.06, Florida Statutes, is amended to read:

895.06 Civil investigative subpoenas; public records exemption.—

~~(1) As used in this section, the term "investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.~~

(1)~~(2)~~ If, pursuant to the civil enforcement provisions of s. 895.05, an investigative agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of this chapter ~~act~~, the investigative agency may administer oaths or affirmations, subpoena witnesses or material, and collect evidence.

(2)~~(3)~~ A subpoena issued pursuant to this chapter is confidential for 120 days after the date of its issuance. The

subpoenaed person or entity may not disclose the existence of the subpoena to any person or entity other than his or her attorney during the 120-day period. The subpoena must include a reference to the confidentiality of the subpoena and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any person or entity other than the subpoenaed person's or entity's attorney is prohibited. The investigative agency may apply ex parte to the circuit court for the circuit in which a subpoenaed person or entity resides, is found, or transacts business for an order directing that the subpoenaed person or entity not disclose the existence of the subpoena to any other person or entity except the subpoenaed person's attorney for an additional ~~a~~ period of time ~~90 days, which time may be extended by the court~~ for good cause shown by the investigative agency. The order shall be served on the subpoenaed person or entity with the subpoena, and the subpoena must ~~shall~~ include a reference to the order and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any other person or entity in violation of the order may subject the subpoenaed person or entity to punishment for contempt of court. Such an order may be granted by the court only upon a showing:

(a) Of sufficient factual grounds to reasonably indicate a violation of ss. 895.01-895.06;

(b) That the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence; and

(c) Of facts that ~~which~~ reasonably indicate that disclosure of the subpoena would hamper or impede the investigation or

would result in a flight from prosecution.

(3) ~~(4)~~ If matter that the investigative agency seeks to obtain by the subpoena is located outside the state, the person or enterprise subpoenaed may make such matter available to the investigative agency or its representative for examination at the place where such matter is located. The investigative agency may designate representatives, including officials of the jurisdiction in which the matter is located, to inspect the matter on its behalf and may respond to similar requests from officials of other jurisdictions.

(4) ~~(5)~~ Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena issued under this section or a subpoena issued in the course of a civil proceeding instituted pursuant to s. 895.05, and after reasonable notice to such person or enterprise, the investigative agency may apply to the circuit court in which such civil proceeding is pending or, if no civil proceeding is pending, to the circuit court for the judicial circuit in which such person or enterprise resides, is found, or transacts business for an order compelling compliance. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or material after asserting a privilege against self-incrimination to which the individual is entitled by law shall not have the testimony or material so provided, or evidence derived therefrom, received against him or her in any criminal investigation or proceeding.

(5) ~~(6)~~ A person who fails to obey a court order entered pursuant to this section may be punished for contempt of court.

(6) The investigative agency may stipulate to protective orders with respect to documents and information submitted in

response to a subpoena issued under this section.

(7)(a) Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to:

1. A government entity in the performance of its official duties.

2. A court or tribunal.

(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

(d) For purposes of this subsection, an investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

(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 4. Paragraph (b) of subsection (1) of section 895.09, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

895.09 Disposition of funds obtained through forfeiture proceedings.—

(1) A court entering a judgment of forfeiture in a proceeding brought pursuant to s. 895.05 shall retain jurisdiction to direct the distribution of any cash or of any

cash proceeds realized from the forfeiture and disposition of the property. The court shall direct the distribution of the funds in the following order of priority:

(b) Any claims against the property by persons who have previously been judicially determined to be innocent persons, pursuant to s. 895.05(2)(e) ~~the provisions of s. 895.05(2)(c)~~, and whose interests are preserved from forfeiture by the court and not otherwise satisfied. Such claims may include any claim by a person appointed by the court as receiver pending litigation.

(d) Any claims for restitution by victims of racketeering activity. If the forfeiture action was brought by the Department of Legal Affairs, the restitution shall be distributed through the Legal Affairs Revolving Trust Fund; otherwise, the restitution shall be distributed by the clerk of the court.

Section 5. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in

the definition of racketeering activity in s. 895.02(8)(a) ~~895.02(1)(a)~~, providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and

Investor Protection Act; or

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 6. Subsection (3) of section 905.34, Florida Statutes, is amended to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a) ~~895.02(1)(a)~~, providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the

prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 7. For the purpose of incorporating the amendment made by this act to section 895.05, Florida Statutes, in a reference thereto, subsection (4) and paragraph (a) of subsection (5) of section 16.53, Florida Statutes, are reenacted, and subsection (6) of that section is amended, to read:

16.53 Legal Affairs Revolving Trust Fund.—

(4) Subject to the provisions of s. 895.09, when the Attorney General files an action pursuant to s. 895.05, funds provided to the Department of Legal Affairs pursuant to s. 895.09(2)(a) or, alternatively, attorneys' fees and costs,

whichever is greater, shall be deposited in the fund.

(5)(a) In the case of a forfeiture action pursuant to s. 895.05, the remainder of the moneys recovered shall be distributed as set forth in s. 895.09.

(6) "Moneys recovered" means damages or penalties or any other monetary payment, including monetary proceeds from property forfeited to the state pursuant to s. 895.05 remaining after satisfaction of any valid claims made pursuant to s. 895.09(1)(a)-(d) ~~895.09(1)(a)-(c)~~, which damages, penalties, or other monetary payment is made by any defendant by reason of any decree or settlement in any Racketeer Influenced and Corrupt Organization Act or state or federal antitrust action prosecuted by the Attorney General, but excludes attorney ~~attorneys'~~ fees and costs.

Section 8. For the purpose of incorporating the amendment made by this act to section 895.05, Florida Statutes, in a reference thereto, subsection (1) of section 27.345, Florida Statutes, is reenacted to read:

27.345 State Attorney RICO Trust Fund; authorized use of funds; reporting.—

(1) Subject to the provisions of s. 895.09, when a state attorney files an action pursuant to s. 895.05, funds provided to the state attorney pursuant to s. 895.09(2)(a) or, alternatively, attorneys' fees and costs, whichever is greater, shall be deposited in the State Attorney RICO Trust Fund.

Section 9. For the purpose of incorporating the amendment made by this act to section 895.05, Florida Statutes, in a reference thereto, subsection (3) of section 92.142, Florida Statutes, is reenacted to read:

92.142 Witnesses; pay.—

(3) Any witness subpoenaed to testify on behalf of the state in any action brought pursuant to s. 895.05 or chapter 542 who is required to travel outside his or her county of residence and more than 50 miles from his or her residence, or who is required to travel from out of state, shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061 in lieu of any state witness fee.

Section 10. This act shall take effect July 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 Appropriations

BILL:	PCS/SB 886 (203738)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Benacquisto
SUBJECT:	Parent and Student Rights
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 886 expands notification requirements and educational choice options available for parents to make informed decisions about the placement of their children in an educational setting. Specifically the bill:

- Expands parent notification requirements to include school district reporting average of estimated funding expenditures on a per student basis.
- Authorizes parent ability to choose to enroll his or her child in any public school in the state which has not reached capacity. The bill further specifies the components of the school district educational facilities plan which the district school board must consider in determining capacity.
- Authorizes a parent to request a transfer of his or her child to a different classroom teacher.

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The bill takes effect July 1, 2016.

II. Present Situation:

There is a range of information and school choice options available to parents, from academic progress information, multiple school choice options, and notifications about and limits to certain types of teachers that may be assigned a student.

Educational Transparency

Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed about ways that the parents can help their child to succeed in school.[1]

For purposes of exceptional student education (ESE), district school boards must provide parents, at the initial individual education plan (IEP) team meeting, the amount of state appropriations that the school district receives for each of the five ESE support levels for a full-time student.[2]

Public School Educational Choice Options

Parents of public school students may seek school choice options such as controlled open enrollment, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, advanced placement, dual enrollment, International Baccalaureate, Advanced International Certificate of Education, credit by examination or demonstration of competency, the School for Deaf and the Blind, the Florida Virtual School, and the public school options for the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.[3]

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that gives school districts the option of making student school assignments using a parent's indicated preferential public school choice as a significant factor.[4]

Each district school board offering the controlled open enrollment must adopt by rule a controlled open enrollment plan (plan) and post the plan on the district's website.[5] The plan must:[6]

- Adhere to federal desegregation requirements.
- Include an application process required to participate in controlled open enrollment that allows parents to declare school preferences, including placement of siblings within the same school.
- Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases.

[1] Section 1002.20, F.S.
[2] Section 1003.57(1)(j), F.S.
[3] Section 1002.20(6), F.S.
[4] Section 1002.31(1), F.S.; Implementation of the plan by a district school board is optional. Section 1002.31(2), F.S.
[5] Section 1002.31(3), F.S.
[6] Section 1002.31(3), F.S.

- Afford parents of students in multiple session schools preferred access to controlled open enrollment.
- Maintain socioeconomic, demographic, and racial balance.
- Address the availability of transportation.

The controlled open enrollment provisions do not specify how a district may determine, or limit, the number of students that may be enrolled in these schools.[7] However, "over-capacity" is otherwise statutorily defined to mean a school whose capital outlay FTE enrollment exceeds 100 percent of the space and occupancy design capacity of its nonrelocatable facilities.[8] If a school's initial design incorporated relocatable or modular instruction space, an "over-capacity school" means a school the capital outlay FTE enrollment of which exceeds 100% of the space and occupant design capacity of its core facilities.[9]

Notification and Ability to Change Teachers

Each district school board must adopt and implement a plan to assist teachers who teach out-of-field and prioritize professional development activities for such teachers.[10] If a teacher is assigned a class that is outside the field in which the teacher is certified or has demonstrated sufficient subject matter expertise, parents of all students in that class must be notified, in writing, of such assignment.[11]

Public school students are prohibited from being taught by a classroom teacher who received a performance evaluation rating of "needs improvement" or "unsatisfactory" if the student was taught by a classroom teacher that received a performance rating of "needs improvement" or "unsatisfactory" in the previous school year.[12]

III. Effect of Proposed Changes:

This bill expands notification requirements and educational choice options available for parents to make informed decisions about the placement of their children in an educational setting. Specifically the bill:

- Expands parent notification requirements to include school district reporting average of estimated funding expenditures on a per student basis.
- Authorizes parent ability to choose to enroll his or her child in any public school in the state which has not reached capacity. The bill further specifies the components of the school district educational facilities plan which the district school board must consider in determining capacity.
- Authorizes a parent to request a transfer of his or her child to a different classroom teacher.

[7] Section 1002.31, F.S.
[8] Section 1013.21(1)(b), F.S.
[9] *Id.*
[10] Section 1012.42(1), F.S. The district school board must require the teacher to participate in a certification or staff development program that is designed to provide the teacher with the necessary competencies to perform assigned duties. *Id*.
[11] Section 1012.42(2), F.S.
[12] Section 1012.2315(6), F.S. For elementary school students, this probation applies to any subject, while the prohibition for middle school and high school students is limited to teachers who receive the performance evaluations in the same subject area. *Id.* A parent may provide written consent to exempt extracurricular courses from this prohibition. *Id.*

Educational Transparency

The bill requires a school district to notify parents of the estimated amount of funding[13] allocated to a student similar to their child, based upon grade level and level of support. This notification may be included in the student handbook or similar publication.

The bill updates statutes that provide an overview of public and private educational options. The bill also revises applicable terminology by using the term "educational choice" instead of "school choice," to identify that the available choices stem beyond a specific school.

Public School Educational Choice Options

The bill eliminates controlled open enrollment as the mechanism for making student school assignments, and instead allows parents to choose to send their children to any school in the district or state. Specifically, the bill:

- Requires each district school board to establish and post on its website a public school parental choice policy that authorizes a parent to choose to enroll his or her child in any school in the district, including charter schools, subject to capacity. The parent is responsible for providing transportation.
- Allows a parent to choose to enroll his or her child in any public school in the state, including charter schools, that has not reached capacity. The district may provide transportation at the district's discretion, otherwise the parent is responsible for transporting the child to school. The school district must report the student for purposes of the district's funding pursuant to the Florida Education Finance Program.
- Requires a school district to identify which schools have not reached capacity. In determining the capacity of each school, the district school board must incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and long term work programs.

Notification and Ability to Change Teachers

The bill creates two new mechanisms for a parent to request transfer of his or her child to a different teacher:

- Each district school board must establish a transfer process for a parent to request his or her child to be transferred to another classroom teacher. The transfer process must be published in the student handbook or similar publication. A school must grant or deny the transfer within two weeks after receiving a request for such transfer. If a request is denied, the school must notify the parent of the denial and provide reasons for the denial.
- A parent may request a transfer of his or her child to another classroom teacher within the school and grade upon receipt of written notification that the child's assigned teacher is an out-of-field teacher. The bill requires school districts to grant parents' requests for such transfers within two weeks; however, parents do not have the right to choose a specific teacher.

[13] The funding amount is the average amount of money estimated to be expended from all sources, state, local, and federal, including operating and capital outlay expenses.

The bill takes effect July 1, 2016.

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:

PCS/SB 886 is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.31, 1002.33, 1002.38, 1002.451, 1006.15, and 1012.42.

This bill creates section 1003.3101 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 Education on January 28, 2016:
The committee substitute requires a district school board, when determining the capacity of each school, to incorporate specific components of the school district educational facilities plan.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 241 - 245

and insert:

student is currently enrolled. A school must approve or deny the transfer within 2 weeks after receiving a request. If a request for transfer is denied, the school must notify the parent and specify the reasons for the denial. An explanation of the transfer process must be made available in the student handbook or a similar publication.

191726

11
12 ========== T I T L E A M E N D M E N T ==========
13 And the title is amended as follows:
14 Delete lines 54 - 56
15 and insert:
16 specified timeframe; requiring an explanation of the
17 transfer process be made available in the student
18 handbook or a similar publication; amending ss.
19 1002.38, 1002.451, and 1006.15,


203738

576-02721-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to parent and student rights; amending s. 1002.20, F.S.; revising public school educational choice options available to students throughout the state to include CAPE Digital Tool certificates, CAPE industry certifications, and collegiate high school programs; authorizing parents of public school students to seek private educational choice options through the Florida Personal Learning Scholarship Accounts Program under certain circumstances; providing the right of a parent to know an estimated amount of money expended for the education of his or her child; requiring the Department of Education to provide each school district with such information; requiring the school districts to provide notification to parents; authorizing the information to be published in the student handbook or a similar publication; amending s. 1002.31, F.S.; deleting the definition of and provisions relating to the term "controlled open enrollment"; requiring each school district to establish a public school parental choice policy that authorizes parents to choose to enroll their child in and transport their child to any public school that has not reached capacity in the state; authorizing a school district to provide transportation to students who participate in the public school parental choice policy; prohibiting the


203738

576-02721-16

displacement of certain students who participate in the public school parental choice policy; authorizing a student participating in the public school parental choice policy to remain at a school until a certain time; revising requirements for the public school parental choice plan; requiring a district school board to incorporate certain information in its determination of the capacity of each school; authorizing a parent to enroll and transport his or her child to a public school that has not reached capacity by a specified date; requiring the school district to report a student for purposes of the school district's funding; amending s. 1002.33, F.S.; requiring a charter school with space available to be open to any student in the state; creating s. 1003.3101, F.S.; requiring each school district board to establish a classroom teacher transfer process for parents, to approve or deny a transfer request within a certain timeframe, to notify a parent of a denial, and to post an explanation of the transfer process in the student handbook or a similar publication; amending s. 1012.42, F.S.; authorizing a parent of a child whose teacher is teaching outside the teacher's field to request that the child be transferred to another classroom teacher within the school and grade in which the child is currently enrolled within a specified timeframe; specifying that a transfer does not provide a parent the right to choose a specific teacher; amending ss. 1002.38, 1002.451, and 1006.15,

F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (6) of section 1002.20, Florida Statutes, are amended, and subsection (25) is added to that section, to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(a) *Public educational ~~school~~ choices.*—Parents of public school students may seek whatever public educational ~~school~~ choice options that are applicable and available to students throughout the state ~~in their school districts~~. These options may include public school parental choice ~~controlled open enrollment~~, single-gender programs, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, CAPE Digital Tool certificates, CAPE industry certifications, collegiate high school programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate of Secondary Education (pre-AICE), Advanced International Certificate of Education, early admissions, credit by

examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public educational ~~school~~ choice options of the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.

(b) *Private educational ~~school~~ choices.*—Parents of public school students may seek private educational ~~school~~ choice options under certain programs.

1. Under the McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability may request and receive a McKay Scholarship for the student to attend a private school in accordance with s. 1002.39.

2. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch or who is currently placed, or during the previous state fiscal year was placed, in foster care as defined in s. 39.01 may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with s. 1002.395.

3. Under the Florida Personal Learning Scholarship Accounts Program, the parent of a student with a qualifying disability may apply for a personal learning scholarship to be used for educational needs in accordance with s. 1002.385.

(25) FISCAL TRANSPARENCY.—A parent has the right to know the average amount of money estimated to be expended from all local, state, and federal sources, for the education of his or her child, including operating and capital outlay expenses. The department shall annually provide each district the estimated

amount of funding allocated for a student in the district by grade level and level of support. Each district must notify parents of the estimated amount of funding allocated for a student similar to their child, based upon grade level and level of support. The fiscal transparency notification may be included in the student handbook or a similar publication.

Section 2. Section 1002.31, Florida Statutes, is amended to read:

1002.31 ~~Controlled open enrollment;~~ Public school parental choice.—

~~(1) As used in this section, "controlled open enrollment" means a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.~~

(1)~~(2)~~ Each district school board shall establish a public school parental choice policy that authorizes a parent to choose to enroll his or her child in and transport his or her child to any public school in the state which has not reached capacity, including charter schools. This policy ~~may offer controlled open enrollment within the public schools which~~ is in addition to the existing choice programs, such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment. The district may provide transportation to the students at the district's discretion. A student assigned to a school may not be displaced by the public school parental choice policy included in the district's plan. For the purposes of continuity of educational choice, a student may continue to attend the chosen school until the student completes the highest grade offered by the school.

(2)~~(3)~~ Each district school board ~~offering controlled open enrollment~~ shall adopt by rule and post on its website a public school parental choice ~~controlled open enrollment~~ plan that ~~which~~ must:

(a) Adhere to federal desegregation requirements.

(b) ~~Include an application process required to participate in controlled open enrollment that allows parents to declare school preferences, including placement of siblings within the same school.~~

~~(c)~~ Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases.

(c)~~(d)~~ Afford parents of students in multiple session schools preferred access ~~to controlled open enrollment~~.

(d)~~(c)~~ Maintain socioeconomic, demographic, and racial balance.

(e)~~(f)~~ Address the availability of transportation.

(f) Maintain existing eligibility criteria for educational choice, pursuant to s. 1002.20(6)(a).

(g) Identify schools that have not reached capacity. In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35.

(h) Provide preferential treatment to all of the following:

1. Dependent children of active duty military personnel.

2. Siblings who could attend the same school.

3. Students residing in the district.

4. Children who have been relocated due to a foster care

placement.

(3) Beginning in the 2017-2018 school year, or earlier if authorized by the district, a parent may choose to enroll his or her child in and transport his or her child to any public school that has not reached capacity, including charter schools, in any school district in this state. The school district shall accept the student and report the student for purposes of the district's funding pursuant to the Florida Education Finance Program.

(4) For a student in grades 9 through 12, interscholastic and intrascholastic extracurricular student activity eligibility may be impacted by choosing to attend a school other than the school assigned by the district.

(5) ~~(4)~~ In accordance with the reporting requirements of s. 1011.62, each district school board shall annually report the number of students exercising public school choice, by type of educational choice, in accordance with ~~attending the various types of public schools of choice in the district, including schools such as virtual instruction programs, magnet schools, and public charter schools, according to~~ rules adopted by the State Board of Education.

(6) ~~(5)~~ For a school or program that is a public school of choice under this section, the calculation for compliance with maximum class size pursuant to s. 1003.03 is the average number of students at the school level.

Section 3. Paragraph (a) of subsection (10) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(10) ELIGIBLE STUDENTS.—

(a) A charter school must ~~shall~~ be open to any student covered in an interdistrict agreement or residing in the school district in which the charter school is located; however, in the case of a charter lab school, the charter lab school must ~~shall~~ be open to any student eligible to attend the lab school as provided in s. 1002.32 or who resides in the school district in which the charter lab school is located. A charter school with space available must be open to any student in the state, pursuant to s. 1002.31. Any eligible student must ~~shall~~ be allowed interdistrict transfer to attend a charter school when based on good cause. Good cause includes ~~shall include~~, but is not limited to, geographic proximity to a charter school in a neighboring school district.

Section 4. Section 1003.3101, Florida Statutes, is created to read:

1003.3101 Additional educational choice options.—Each school district board shall establish a transfer process for a parent to request his or her child be transferred to another classroom teacher. A school must approve or deny the transfer within 2 weeks after receiving a request. If a request for transfer is denied, the school must notify the parent and specify the reasons for the denial. An explanation of the transfer process must be made available in the student handbook or a similar publication.

Section 5. Subsection (2) of section 1012.42, Florida Statutes, is amended to read:

1012.42 Teacher teaching out-of-field.—

(2) NOTIFICATION REQUIREMENTS.—When a teacher in a district school system is assigned teaching duties in a class dealing

with subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise, as determined by district school board policy in the subject area to be taught, the parents of all students in the class shall be notified in writing of such assignment. A parent who receives this notification may, after the October student membership survey, request that his or her child be transferred to another classroom teacher within the school and grade in which the student is currently enrolled. The school district shall grant the parent's request and transfer the student to a different classroom teacher within a reasonable period of time, not to exceed 2 weeks. This subsection does not provide a parent the right to choose a specific teacher.

Section 6. Paragraph (e) of subsection (3) of section 1002.38, Florida Statutes, is amended to read:

1002.38 Opportunity Scholarship Program.—

(3) SCHOOL DISTRICT OBLIGATIONS.—

(e) If the parent chooses to request that the student be enrolled in a higher-performing public school in the school district, transportation costs to the higher-performing public school shall be the responsibility of the school district. The district may utilize state categorical transportation funds or state-appropriated public educational ~~school~~ choice incentive funds for this purpose.

Section 7. Paragraph (c) of subsection (1) and paragraph (a) of subsection (6) of section 1002.451, Florida Statutes, are amended to read:

1002.451 District innovation school of technology program.—

(1) DISTRICT INNOVATION SCHOOL OF TECHNOLOGY.—

(c) An innovation school of technology must be open to any student covered in an interdistrict agreement or residing in the school district in which the innovation school of technology is located. An innovation school of technology shall enroll an eligible student who submits a timely application if the number of applications does not exceed the capacity of a program, class, grade level, or building. If the number of applications exceeds capacity, all applicants shall have an equal chance of being admitted through a public random selection process. However, a district may give enrollment preference to students who identify the innovation school of technology as the student's preferred choice pursuant to the district's public school parental choice ~~controlled open enrollment~~ plan.

(6) APPLICATION PROCESS AND PERFORMANCE CONTRACT.—

(a) A district school board may apply to the State Board of Education for an innovation school of technology if the district:

1. Has at least 20 percent of its total enrollment in public educational ~~school~~ choice programs or at least 5 percent of its total enrollment in charter schools;

2. Has no material weaknesses or instances of material noncompliance noted in the annual financial audit conducted pursuant to s. 218.39; and

3. Has received a district grade of "A" or "B" in each of the past 3 years.

Section 8. Paragraphs (c), (d), and (e) of subsection (3) of section 1006.15, Florida Statutes, are amended to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student activities; regulation.—

(3)

(c) An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to public school parental choice ~~district or interdistrict controlled open enrollment~~ provisions, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s. 1002.41.

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal which may include: review of the student's work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a Florida College System institution, university, or trade school; standardized test scores above the 35th percentile; or any other method designated in s. 1002.41.

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards

of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A home education student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

(d) An individual charter school student pursuant to s. 1002.33 is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend, pursuant to district or interdistrict public school parental choice ~~controlled open-enrollment~~ provisions, in any interscholastic extracurricular activity of that school, unless


203738

576-02721-16

such activity is provided by the student's charter school, if the following conditions are met:

1. The charter school student must meet the requirements of the charter school education program as determined by the charter school governing board.

2. During the period of participation at a school, the charter school student must demonstrate educational progress as required in paragraph (b).

3. The charter school student must meet the same residency requirements as other students in the school at which he or she participates.

4. The charter school student must meet the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. The charter school student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A charter school student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a charter school program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been


203738

576-02721-16

unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a charter school student until the student has successfully completed one grading period in a charter school pursuant to subparagraph 2. to become eligible to participate as a charter school student.

(e) A student of the Florida Virtual School full-time program may participate in any interscholastic extracurricular activity at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend, pursuant to district or interdistrict public school parental choice ~~controlled open enrollment~~ policies, if the student:

1. During the period of participation in the interscholastic extracurricular activity, meets the requirements in paragraph (a).

2. Meets any additional requirements as determined by the board of trustees of the Florida Virtual School.

3. Meets the same residency requirements as other students in the school at which he or she participates.

4. Meets the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. Registers his or her intent to participate in interscholastic extracurricular activities with the school before the beginning date of the season for the activity in which he or she wishes to participate. A Florida Virtual School student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

203738

576-02721-16

405 Section 9. This act shall take effect July 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 Appropriations

BILL:	SB 886
INTRODUCER:	Senator Benacquisto
SUBJECT:	Parent and Student Rights
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 886 expands notification requirements and educational choice options available for parents to make informed decisions about the placement of their children in an educational setting. Specifically the bill:

- Expands parent notification requirements to include school district reporting average of estimated funding expenditures on a per student basis.
- Authorizes parent ability to choose to enroll his or her child in any public school in the state which has not reached capacity. The bill further defines capacity.
- Authorizes a parent to request a transfer of his or her child to a different classroom teacher.

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The bill takes effect July 1, 2016.

II. Present Situation:

There is a range of information and school choice options available to parents, from academic progress information, multiple school choice options, and notifications about and limits to certain types of teachers that may be assigned a student.

Educational Transparency

Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed about ways that the parents can help their child to succeed in school.[1]

For purposes of exceptional student education (ESE), district school boards must provide parents, at the initial individual education plan (IEP) team meeting, the amount of state appropriations that the school district receives for each of the five ESE support levels for a full-time student.[2]

Public School Educational Choice Options

Parents of public school students may seek school choice options such as controlled open enrollment, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, advanced placement, dual enrollment, International Baccalaureate, Advanced International Certificate of Education, credit by examination or demonstration of competency, the School for Deaf and the Blind, the Florida Virtual School, and the public school options for the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.[3]

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that gives school districts the option of making student school assignments using a parent's indicated preferential public school choice as a significant factor.[4]

Each district school board offering the controlled open enrollment must adopt by rule a controlled open enrollment plan (plan) and post the plan on the district's website.[5] The plan must:[6]

- Adhere to federal desegregation requirements.
- Include an application process required to participate in controlled open enrollment that allows parents to declare school preferences, including placement of siblings within the same school.
- Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases.
- Afford parents of students in multiple session schools preferred access to controlled open enrollment.
- Maintain socioeconomic, demographic, and racial balance.
- Address the availability of transportation.

[1] Section 1002.20, F.S.
[2] Section 1003.57(1)(j), F.S.
[3] Section 1002.20(6), F.S.
[4] Section 1002.31(1), F.S.; Implementation of the plan by a district school board is optional. Section 1002.31(2), F.S.
[5] Section 1002.31(3), F.S.
[6] Section 1002.31(3), F.S.

The controlled open enrollment provisions do not specify how a district may determine, or limit, the number of students that may be enrolled in these schools.[7] However, "over-capacity" is otherwise statutorily defined to mean a school whose capital outlay FTE enrollment exceeds 100 percent of the space and occupancy design capacity of its nonrelocatable facilities.[8] If a school's initial design incorporated relocatable or modular instruction space, an "over-capacity school" means a school the capital outlay FTE enrollment of which exceeds 100% of the space and occupant design capacity of its core facilities.[9]

Notification and Ability to Change Teachers

Each district school board must adopt and implement a plan to assist teachers who teach out-of-field and prioritize professional development activities for such teachers.[10] If a teacher is assigned a class that is outside the field in which the teacher is certified or has demonstrated sufficient subject matter expertise, parents of all students in that class must be notified, in writing, of such assignment.[11]

Public school students are prohibited from being taught by a classroom teacher who received a performance evaluation rating of "needs improvement" or "unsatisfactory" if the student was taught by a classroom teacher that received a performance rating of "needs improvement" or "unsatisfactory" in the previous school year.[12]

III. Effect of Proposed Changes:

This bill expands notification requirements and educational choice options available for parents to make informed decisions about the placement of their children in an educational setting. Specifically the bill:

- Expands parent notification requirements to include school district reporting average of estimated funding expenditures on a per student basis.
- Authorizes parent ability to choose to enroll his or her child in any public school in the state which has not reached capacity. The bill further defines capacity.
- Authorizes a parent to request a transfer of his or her child to a different classroom teacher.

Educational Transparency

The bill requires a school district to notify parents of the estimated amount of funding[13] allocated to a student similar to their child, based upon grade level and level of support. This notification may be included in the student handbook or similar publication.

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[7] Section 1002.31, F.S.
[8] Section 1013.21(1)(b), F.S.
[9] *Id.*
[10] Section 1012.42(1), F.S. The district school board must require the teacher to participate in a certification or staff development program that is designed to provide the teacher with the necessary competencies to perform assigned duties. *Id*.
[11] Section 1012.42(2), F.S.
[12] Section 1012.2315(6), F.S. For elementary school students, this probation applies to any subject, while the prohibition for middle school and high school students is limited to teachers who receive the performance evaluations in the same subject area. *Id.* A parent may provide written consent to exempt extracurricular courses from this prohibition. *Id.*
[13] The funding amount is the average amount of money estimated to be expended from all sources, state, local, and federal, including operating and capital outlay expenses.

The bill updates statutes that provide an overview of public and private educational options. The bill also revises applicable terminology by using the term "educational choice" instead of "school choice," to identify that the available choices stem beyond a specific school.

Public School Educational Choice Options

The bill eliminates controlled open enrollment as the mechanism for making student school assignments, and instead allows parents to choose to send their children to any school in the district or state. Specifically, the bill:

- Requires each district school board to establish and post on its website a public school parental choice policy that authorizes a parent to choose to enroll his or her child in any school in the district, including charter schools, subject to capacity. The parent is responsible for providing transportation.
- Allows a parent to choose to enroll his or her child in any public school in the state, including charter schools, that has not reached capacity. The district may provide transportation at the district's discretion, otherwise the parent is responsible for transporting the child to school. The school district must report the student for purposes of the district's funding pursuant to the Florida Education Finance Program.
- Defines capacity to mean a school in which the capital outlay full-time equivalent (FTE) enrollment exceeds 95 percent of the space and occupant design capacity of its nonrelocatable facilities. If a school's initial design incorporated relocatable or modular instructional space, the term "capacity" must mean a school in which the capital outlay FTE enrollment exceeds 95 percent of the space and occupant design capacity of its core facilities. In effect, the bill prevents controlled open enrollment plans from identifying artificially low limits to student enrollment, while ensuring a 5 percent buffer for overall school capacity.

Notification and Ability to Change Teachers

The bill creates two new mechanisms for a parent to request transfer of his or her child to a different teacher:

- Each district school board must establish a transfer process for a parent to request his or her child to be transferred to another classroom teacher. The transfer process must be published in the student handbook or similar publication. A school must grant or deny the transfer within two weeks after receiving a request for such transfer. If a request is denied, the school must notify the parent of the denial and provide reasons for the denial.
- A parent may request a transfer of his or her child to another classroom teacher within the school and grade upon receipt of written notification that the child's assigned teacher is an out-of-field teacher. The bill requires school districts to grant parents' requests for such transfers within two weeks; however, parents do not have the right to choose a specific teacher.

The bill takes effect July 1, 2016.

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:

SB 886 is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.31, 1002.33, 1002.38, 1002.451, 1006.15, and 1012.42.

This bill creates section 1003.3101 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Benacquisto

30-00637A-16 2016886__

A bill to be entitled

An act relating to parent and student rights; amending s. 1002.20, F.S.; revising public school educational choice options available to students throughout the state to include CAPE Digital Tool certificates, CAPE industry certifications, and collegiate high school programs; authorizing parents of public school students to seek private educational choice options through the Florida Personal Learning Scholarship Accounts Program under certain circumstances; providing the right of a parent to know an estimated amount of money expended for the education of his or her child; requiring the Department of Education to provide each school district with such information; requiring the school districts to provide notification to parents; authorizing the information to be published in the student handbook or a similar publication; amending s. 1002.31, F.S.; deleting the definition of and provisions relating to the term "controlled open enrollment"; requiring each school district to establish a public school parental choice policy that authorizes parents to choose to enroll their child in and transport their child to any public school that has not reached capacity in the state; authorizing a school district to provide transportation to students who participate in the public school parental choice policy; prohibiting the displacement of certain students who participate in the public school parental choice policy; authorizing

30-00637A-16 2016886__

a student participating in the public school parental choice policy to remain at a school until a certain time; revising requirements for the public school parental choice plan; defining the term "capacity"; authorizing a parent to enroll and transport his or her child to a public school that has not reached capacity by a specified date; requiring the school district to report a student for purposes of the school district's funding; amending s. 1002.33, F.S.; requiring a charter school with space available to be open to any student in the state; creating s. 1003.3101, F.S.; requiring each school district board to establish a classroom teacher transfer process for parents, to approve or deny a transfer request within a certain timeframe, to notify a parent of a denial, and to post an explanation of the transfer process in the student handbook or a similar publication; amending s. 1012.42, F.S.; authorizing a parent of a child whose teacher is teaching outside the teacher's field to request that the child be transferred to another classroom teacher within the school and grade in which the child is currently enrolled within a specified timeframe; specifying that a transfer does not provide a parent the right to choose a specific teacher; amending ss. 1002.38, 1002.451, and 1006.15, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (6) of section 1002.20, Florida Statutes, are amended, and subsection (25) is added to that section, to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(a) *Public educational ~~school~~ choices.*—Parents of public school students may seek whatever public educational ~~school~~ choice options that are applicable and available to students throughout the state ~~in their school districts~~. These options may include public school parental choice ~~controlled open enrollment~~, single-gender programs, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, CAPE Digital Tool certificates, CAPE industry certifications, collegiate high school programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate of Secondary Education (pre-AICE), Advanced International Certificate of Education, early admissions, credit by examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public educational ~~school~~ choice options of the Opportunity

Scholarship Program and the McKay Scholarships for Students with Disabilities Program.

(b) *Private educational ~~school~~ choices.*—Parents of public school students may seek private educational ~~school~~ choice options under certain programs.

1. Under the McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability may request and receive a McKay Scholarship for the student to attend a private school in accordance with s. 1002.39.

2. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch or who is currently placed, or during the previous state fiscal year was placed, in foster care as defined in s. 39.01 may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with s. 1002.395.

3. Under the Florida Personal Learning Scholarship Accounts Program, the parent of a student with a qualifying disability may apply for a personal learning scholarship to be used for educational needs in accordance with s. 1002.385.

(25) FISCAL TRANSPARENCY.—A parent has the right to know the average amount of money estimated to be expended from all local, state, and federal sources, for the education of his or her child, including operating and capital outlay expenses. The department shall annually provide each district the estimated amount of funding allocated for a student in the district by grade level and level of support. Each district must notify parents of the estimated amount of funding allocated for a student similar to their child, based upon grade level and level

of support. The fiscal transparency notification may be included in the student handbook or a similar publication.

Section 2. Section 1002.31, Florida Statutes, is amended to read:

1002.31 ~~Controlled open enrollment;~~ Public school parental choice.—

~~(1) As used in this section, "controlled open enrollment" means a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.~~

(1)~~(2)~~ Each district school board shall establish a public school parental choice policy that authorizes a parent to choose to enroll his or her child in and transport his or her child to any public school in the state which has not reached capacity, including charter schools. This policy ~~may offer controlled open enrollment within the public schools which~~ is in addition to the existing choice programs, such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment. The district may provide transportation to the students at the district's discretion. A student assigned to a school may not be displaced by the public school parental choice policy included in the district's plan. For the purposes of continuity of educational choice, a student may continue to attend the chosen school until the student completes the highest grade offered by the school.

(2)~~(3)~~ Each district school board ~~offering controlled open enrollment~~ shall adopt by rule and post on its website a public school parental choice ~~controlled open enrollment~~ plan that ~~which~~ must:

(a) Adhere to federal desegregation requirements.

(b) ~~Include an application process required to participate in controlled open enrollment that allows parents to declare school preferences, including placement of siblings within the same school.~~

~~(c)~~ Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases.

(c)~~(d)~~ Afford parents of students in multiple session schools preferred access ~~to controlled open enrollment~~.

(d)~~(e)~~ Maintain socioeconomic, demographic, and racial balance.

(e)~~(f)~~ Address the availability of transportation.

(f) Maintain existing eligibility criteria for educational choice, pursuant to s. 1002.20(6)(a).

(g) Identify schools that have not reached capacity. The term "capacity" means a level of capital outlay FTE enrollment in a school which exceeds 95 percent of the space and occupant design capacity of its nonrelocatable facilities. However, if a school's initial design incorporated relocatable or modular instructional space, the term means a level of capital outlay FTE enrollment in a school which exceeds 95 percent of the space and occupant design capacity of its core facilities.

(h) Provide preferential treatment to all of the following:

1. Dependent children of active duty military personnel.

2. Siblings who could attend the same school.

3. Students residing in the district.

4. Children who have been relocated due to a foster care placement.

(3) Beginning in the 2017-2018 school year, or earlier if

authorized by the district, a parent may choose to enroll his or her child in and transport his or her child to any public school that has not reached capacity, including charter schools, in any school district in this state. The school district shall accept the student and report the student for purposes of the district's funding pursuant to the Florida Education Finance Program.

(4) For a student in grades 9 through 12, interscholastic and intrascholastic extracurricular student activity eligibility may be impacted by choosing to attend a school other than the school assigned by the district.

(5) ~~(4)~~ In accordance with the reporting requirements of s. 1011.62, each district school board shall annually report the number of students exercising public school choice, by type of educational choice, in accordance with ~~attending the various types of public schools of choice in the district, including schools such as virtual instruction programs, magnet schools, and public charter schools, according to~~ rules adopted by the State Board of Education.

(6) ~~(5)~~ For a school or program that is a public school of choice under this section, the calculation for compliance with maximum class size pursuant to s. 1003.03 is the average number of students at the school level.

Section 3. Paragraph (a) of subsection (10) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(10) ELIGIBLE STUDENTS.—

(a) A charter school must ~~shall~~ be open to any student covered in an interdistrict agreement or residing in the school

district in which the charter school is located; however, in the case of a charter lab school, the charter lab school must ~~shall~~ be open to any student eligible to attend the lab school as provided in s. 1002.32 or who resides in the school district in which the charter lab school is located. A charter school with space available must be open to any student in the state, pursuant to s. 1002.31. Any eligible student must ~~shall~~ be allowed interdistrict transfer to attend a charter school when based on good cause. Good cause includes ~~shall include~~, but is not limited to, geographic proximity to a charter school in a neighboring school district.

Section 4. Section 1003.3101, Florida Statutes, is created to read:

1003.3101 Additional educational choice options.—Each school district board shall establish a transfer process for a parent to request his or her child be transferred to another classroom teacher. A school must approve or deny the transfer within 2 weeks after receiving a request. If a request for transfer is denied, the school must notify the parent and specify the reasons for the denial. An explanation of the transfer process must be made available in the student handbook or a similar publication.

Section 5. Subsection (2) of section 1012.42, Florida Statutes, is amended to read:

1012.42 Teacher teaching out-of-field.—

(2) NOTIFICATION REQUIREMENTS.—When a teacher in a district school system is assigned teaching duties in a class dealing with subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's

minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise, as determined by district school board policy in the subject area to be taught, the parents of all students in the class shall be notified in writing of such assignment. A parent who receives this notification may, after the October student membership survey, request that his or her child be transferred to another classroom teacher within the school and grade in which the student is currently enrolled. The school district shall grant the parent's request and transfer the student to a different classroom teacher within a reasonable period of time, not to exceed 2 weeks. This subsection does not provide a parent the right to choose a specific teacher.

Section 6. Paragraph (e) of subsection (3) of section 1002.38, Florida Statutes, is amended to read:

1002.38 Opportunity Scholarship Program.—

(3) SCHOOL DISTRICT OBLIGATIONS.—

(e) If the parent chooses to request that the student be enrolled in a higher-performing public school in the school district, transportation costs to the higher-performing public school shall be the responsibility of the school district. The district may utilize state categorical transportation funds or state-appropriated public educational ~~school~~ choice incentive funds for this purpose.

Section 7. Paragraph (c) of subsection (1) and paragraph (a) of subsection (6) of section 1002.451, Florida Statutes, are amended to read:

1002.451 District innovation school of technology program.—

(1) DISTRICT INNOVATION SCHOOL OF TECHNOLOGY.—

(c) An innovation school of technology must be open to any student covered in an interdistrict agreement or residing in the school district in which the innovation school of technology is located. An innovation school of technology shall enroll an eligible student who submits a timely application if the number of applications does not exceed the capacity of a program, class, grade level, or building. If the number of applications exceeds capacity, all applicants shall have an equal chance of being admitted through a public random selection process. However, a district may give enrollment preference to students who identify the innovation school of technology as the student's preferred choice pursuant to the district's public school parental choice ~~controlled open enrollment~~ plan.

(6) APPLICATION PROCESS AND PERFORMANCE CONTRACT.—

(a) A district school board may apply to the State Board of Education for an innovation school of technology if the district:

1. Has at least 20 percent of its total enrollment in public educational ~~school~~ choice programs or at least 5 percent of its total enrollment in charter schools;

2. Has no material weaknesses or instances of material noncompliance noted in the annual financial audit conducted pursuant to s. 218.39; and

3. Has received a district grade of "A" or "B" in each of the past 3 years.

Section 8. Paragraphs (c), (d), and (e) of subsection (3) of section 1006.15, Florida Statutes, are amended to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student

activities; regulation.—

(3)

(c) An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to public school parental choice ~~district or interdistrict controlled open enrollment~~ provisions, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s. 1002.41.

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal which may include: review of the student's work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a Florida College System institution, university, or trade school; standardized test scores above the 35th percentile; or any other method designated in s. 1002.41.

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A home education student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

(d) An individual charter school student pursuant to s. 1002.33 is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend, pursuant to district or interdistrict public school parental choice ~~controlled open-enrollment~~ provisions, in any interscholastic extracurricular activity of that school, unless such activity is provided by the student's charter school, if the following conditions are met:

1. The charter school student must meet the requirements of the charter school education program as determined by the charter school governing board.

2. During the period of participation at a school, the charter school student must demonstrate educational progress as required in paragraph (b).

3. The charter school student must meet the same residency requirements as other students in the school at which he or she participates.

4. The charter school student must meet the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. The charter school student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A charter school student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a charter school program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to

participate in such activities as a charter school student until the student has successfully completed one grading period in a charter school pursuant to subparagraph 2. to become eligible to participate as a charter school student.

(e) A student of the Florida Virtual School full-time program may participate in any interscholastic extracurricular activity at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend, pursuant to district or interdistrict public school parental choice ~~controlled open enrollment~~ policies, if the student:

1. During the period of participation in the interscholastic extracurricular activity, meets the requirements in paragraph (a).

2. Meets any additional requirements as determined by the board of trustees of the Florida Virtual School.

3. Meets the same residency requirements as other students in the school at which he or she participates.

4. Meets the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. Registers his or her intent to participate in interscholastic extracurricular activities with the school before the beginning date of the season for the activity in which he or she wishes to participate. A Florida Virtual School student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

Section 9. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 918 (857014)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Richter
SUBJECT:	Licensure of Health Care Professionals
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Brown/Rossitto-Van Winkle	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 918 authorizes the Department of Health (DOH) to waive fees and issue health care licenses to active duty U.S. military personnel who are within six months of an honorable discharge and to waive fees and issue licenses to active duty military spouses under certain circumstances. The bill authorizes the DOH to issue certificates to military trained emergency medical technicians (EMTs) and paramedics under certain circumstances; and authorizes the issuance of temporary certificates to active duty military licensed in another state and practicing in Florida pursuant to a military platform The bill also eliminates the requirement that a military spouse who has been issued a temporary dental license may practice only under the supervision of a Florida dentist.

The bill exempts a chiropractic physician from regulation in Florida when he or she holds an active license in another jurisdiction and is performing chiropractic procedures or demonstrating equipment or supplies for educational purposes at a board-approved continuing education program.

The bill also updates various provisions regulating health care professions to reflect current operations and to improve operational efficiencies, including:

- Conforming Florida Statute to reflect implementation of the integrated electronic continuing education (CE) tracking system regarding the licensure and renewal process;

- Authorizing the DOH to contract with a third party to serve as the custodian of medical records in the event of a practitioner's death, incapacitation, or abandonment of records;
- Modifying procedures for handling professions that have been operating with cash deficits and which are at the statutory fee cap;
- Deleting the requirement for pre-licensure courses relating to HIV/AIDS and medical errors for certain professions;
- Eliminating a loophole pertaining to the licensure and license renewal of certain felons, persons convicted of Medicaid fraud, or other excluded individuals;
- Eliminating the requirement for annual inspections of dispensing practitioners' facilities;[1]
- Repealing the Council on Certified Nursing Assistants and the Advisory Council of Medical Physicists; and
- Providing for a one-year temporary license for medical physicists.

Additionally, the bill mandates more stringent reporting requirements for the James and Esther King Biomedical Research Program, the William G. "Bill" Bankhead, Jr., David Coley Cancer Research Program, the Ed and Ethel Moore Alzheimer's Disease Research Program within the DOH, and entities that receive a specific appropriation for biomedical research and related functions.

Unspent, but obligated, general revenue funds that are appropriated to the Ed and Ethel Moore Alzheimer's Disease Research Program are authorized to be carried forward on June 30 of each fiscal year for up to five years after the effective date of the original appropriation.

The bill is expected to result in cost savings of approximately $630,000 in recurring funds within the DOH Medical Quality Assurance Trust Fund.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Health Care Practitioner Licensure

The Department of Health (DOH) is responsible for the regulation of health practitioners and health care facilities in Florida for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA), working in conjunction with 22 boards and six councils, licenses and regulates seven types of health care facilities and more than 200 license types in over 40 health care professions.[2] Any person desiring to be a licensed health care professional in Florida must apply to the DOH in writing.[3] Most health care professions are regulated by a board or council in conjunction with the DOH and all professions have different requirements for initial licensure and licensure renewal.[4]

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[1] Under s. 465.0276, F.S., a person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under ch. 465, F.S., to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with s. 465.0276, F.S.

[2] Florida Dep't of Health, Medical Quality Assurance, *Annual Report and Long Range Plan, 2014-2015*, p.6, *available at:* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1415.pdf

[3] Section 456.013, F.S.

[4] *See* chs. 401, 456-468, 478, 480, 483, 484, 486, 490, and 491, F.S.

Initial Licensure Requirements

Military Health Care Practitioner Licensure under Chapter 456, F.S.

Section 456.024, F.S., provides that any member of the U.S. Armed Forces who has served as a health care practitioner on active duty in the military, reserves, National Guard, or in the United States Public Health Service, is also eligible for licensure in Florida. The DOH is required to waive fees and issue these individuals a license if they submit a completed application and proof of the following:

- An honorable discharge within six months before or after the date of submission of the application;[5]
- An active, unencumbered license issued by another state, the District of Columbia, or a U.S. possession or territory, with no disciplinary action taken in the five years preceding the date of submission of the application;
- An affidavit that he or she is not, at the time of submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying;
- Documentation of actively practicing his or her profession for the three years preceding the date of submission of the application; and
- Fingerprints for a background screening, if required for the profession for which he or she is applying.[6]

Florida offers an expedited licensure process to facilitate veterans seeking licensure in a health care profession in Florida through its Veterans Application for Licensure Online Response system (VALOR).[7] In order to qualify, a veteran must apply for the license within six months before, or six months after, he or she is honorably discharged from the Armed Forces. Under the VALOR system, there is no application fee, licensure fee, or unlicensed activity fee.[8]

A board, or the DOH if there is no board, may also issue a temporary health care professional license to the spouse of an active duty member of the Armed Forces upon submission of an application form and fees. The applicant must hold a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States and may not be the subject of any disciplinary proceeding in any jurisdiction relating to the practice of a regulated health care profession in Florida. A spouse who is issued a temporary professional license to practice as a dentist under this authority may practice only under the supervision of a Florida dentist.

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[5] A form DD-214 or an NGB-22 is required as proof of honorable discharge. Department of Health, *Veterans*, http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html (last visited Dec. 15, 2015).
[6] *Id.* The Military Veteran Fee Waiver Request Form, also must be submitted with the application for licensure to receive waiver of fees and is available on the DOH website.
[7] Florida Dep't of Health, *Veterans*, http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html, (last visited Dec. 15, 2015).
[8] *Id.*

Emergency Medical Technicians (EMTs) and Paramedics Certification under Chapter 401, F.S.

EMTs and paramedics in Florida are certified by the DOH under ch. 401, F.S. Frequently, EMTs and paramedics work closely with police and firefighters during an emergency situation. EMTs and paramedics take care of sick or injured patients in an emergency medical setting.[9] Any person seeking certification in Florida as an EMT or paramedic who was trained out of state must provide proof of the following:

- A current EMT or paramedic certification or registration based upon successful completion of a training program approved by the DOH as equivalent to the most recent EMT-Basic or EMT-Paramedic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation;
- A current certificate in cardiopulmonary resuscitation or advanced cardiac life support, and
- Successful completion of the certification examination within two years.

HIV and AIDS Course Requirements

Section 381.0034(3), F.S. and s. 468.1201, F.S., require prospective licensees for midwifery, radiology technology, laboratory technicians, medical physicists, speech-language pathology, and audiology, as a condition of initial licensure, to complete an approved course on HIV and AIDS. An applicant who has not completed the required HIV and AIDS course at the time of initial licensure will, upon submission of an affidavit showing good cause, be allowed six months to complete this requirement.

Medical Errors Course Requirements

Section 456.013(7), F.S., requires that every practitioner regulated by DOH complete a DOH approved two-hour course relating to the prevention of medical errors as part of the licensure and renewal process. The two-hour course counts toward the total number of continuing education (CE) credits required for the profession.

Licensure Renewal Requirements

CE Tracking

Under s. 456.025(7), F.S., the DOH is required to utilize an electronic continuing education (CE) tracking system for each new biennial renewal cycle, and all approved CE providers must submit information on course attendance to the DOH for this system. The initial CE tracking system was not linked to the DOH license renewal system, so in order for a practitioner to renew his or her license, he or she certified that the required CEs had been completed. The DOH is currently deploying an integrated CE tracking system for all professions. Several practice acts still reference the submission of sworn affidavits, audits for compliance, and other methods for proof of completion of CE requirements.[10]

[9] U.S. Bureau of Labor Statistics, EMTs and Paramedics, http://www.bls.gov/ooh/Healthcare/EMTs-and-paramedics.htm#tab-2 (last visited January 28, 2016).
[10] *See* Florida Department of Health, *Senate Bill 918 Analysis*, p. 6, (Nov. 20, 2015) (on file with the Senate Committee on Health Policy).

Felons, Medicaid Fraud, and Excluded Individuals

Section 456.0635(2), F.S., provides that a board or the DOH, if there is no board, must refuse to admit a candidate to any examination, and refuse to issue a license, certificate, or registration, to any applicant if the candidate, applicant, or principal, officer, agent, managing employee, or affiliated person of an applicant:

- Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies;
- Has been terminated for cause from any Medicaid program; or
- Is listed on the U.S. Department of Health and Human Services' List of Excluded Individuals and Entities.

Section 456.0635(2), F.S., provides a tiered timeframe for these individuals to apply for a license, certificate, or registration, depending on the degree and age of the violation. There is a general exception for candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, and who applied for licensure after July 1, 2012.

According to the DOH, recently, when the department refused to renew licenses based on the provisions of s. 456.0635(3), F.S., the licensees have immediately reapplied under the exception in s. 456.0635(2), F.S., and were granted a license. By taking advantage of the exception, licensees who were convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies; or were terminated for cause from the Florida Medicaid or any other state's Medicaid program; or are currently listed on the United States Department of Health and Human Services' List of Excluded Individuals and Entities, have been able to regain a license to practice. When the next renewal cycle ends, those licensees will once again be denied renewal based on s. 456.0635(3), F.S., but the applicants can again reapply for licensure under the exception in s. 456.0635(2), F.S.[11]

Continuing Education Reporting for Renewal

Section 463.007, F.S., authorizes the DOH to periodically require an optometrist to demonstrate his or her professional competence, as a condition of licensure renewal, by completing up to 30 CE hours in the two years preceding renewal. For certified optometrists, the 30 hours of CE must include six or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases.

Section 464.203, F.S., requires a certified nursing assistant (CNA) to complete 12 CE hours of in-service training every year.

Sections 457.107(3), 458.347(4)(e)3., 466.0135(3), 466.014, 466.032(5), 484.047(2), and 486.109(4), F.S., require acupuncturists, physician assistants, dentists, dental hygienists, dental laboratories, hearing aid specialists, and physical therapists to provide an affidavit or written statement attesting to the completion of the required CEs for his or her biennial renewal period.

[11] *Id* at p. 7.

The DOH is authorized to request that a licensee, with or without cause, produce documentation of his or her completed CEs reported for the biennial renewal period.

Licensure Regulation Costs

Section 456.025, F.S., sets forth the legislative intent that all costs of regulating health care professions must be borne solely by licensees and license applicants and that no profession is to operate with a negative cash flow balance. Fees are set by the board, or the DOH where there is no board, and are required to be reasonable while not creating a barrier to licensure. Fees are to be based on potential earnings of licensees, must be similar to similarly licensed professions, and must not be more than 10 percent higher than the actual cost of regulating the profession the previous biennium. All funds collected by the DOH from fees, fines, or costs awarded to the department by a court must be paid into the Medical Quality Assurance Trust Fund. The DOH may not expend funds from one profession to pay for the expenses incurred by another profession, except that the Board of Nursing is responsible for the costs incurred in regulating certified nursing assistants.

The DOH may adopt rules for advancing funds to professions operating with a negative cash balance. However, it may not advance funds to one profession for more than two consecutive years and must charge interest at the current rate earned on trust funds used by the DOH to implement ch. 456, F.S. Interest earned by the trust fund must be allocated to the professions in accordance with its respective investment. Each board or the DOH, by rule, may also assess a one-time fee to each active and inactive licensee in an amount necessary to eliminate a cash deficit in the profession or, if there is no deficit, to maintain the financial integrity of the profession. Not more than one such assessment may be made in any four-year period.

The DOH has provided the following recap of professions that have faced negative cash balances.[12] The boards have imposed four one-time assessments in the past 10 years as follows:

- Electrolysis: FY 2005-2006, $1,306;
- Nursing Home Administrators: FY 2005-2006, $200;
- Dentistry: FY 2007-2008, $250; and
- Midwifery: FY 2008-2009, $250.

Three professions operate in a chronic deficit. Each is at its statutory fee cap and, according to the DOH, the midwifery and electrology professions do not have a large enough licensure base to generate adequate revenue to cover expenditures. These professions and the deficit amount under which they operate are:

	Cash Balance	Renewal Fee	Statutory Fee Cap	Total Licensees
Dentistry	$ (2,144,333)	$ 300	$ 300	14,285
Electrology	$ (638,545)	$ 100	$ 100	1,591
Midwifery	$ (900,115)	$ 500	$ 500	206

If the boards or the DOH were to impose a one-time assessment, the amounts needed to eliminate the deficits and result in solvency though Fiscal Year 2019-2020 would be:

[12] *Id*. at p. 5.

- Dentistry: $450 per active/inactive licensee;
- Electrology: $900 per active/inactive licensee; and
- Midwifery: $5,500 per active/inactive licensee.

Section 456.025, F.S., allows the boards, or the DOH if there is no board, to collect up to $250 from CE providers seeking approval or renewal of individual courses. The fees are required to be used to review the proposed courses and for implementation of the electronic CE tracking system which is integrated with the licensure and renewal systems.

Section 456.025, F.S., also requires the chairpersons of the boards and councils to meet annually to review the long-range policy plan and current and proposed fee schedules. The chairpersons are required to make recommendations for any necessary statutory changes relating to fees and fee caps which must be compiled by the DOH and included in its annual report to the Legislature.

Ownership and Control of Patient Records

Section 456.057(20), F.S., provides that the board or the DOH may appoint a medical records custodian for patient records in the event of the death or incapacitation of a practitioner or when patient records have been abandoned. The custodian is required to comply with all requirements of s. 456.057, F.S. The DOH reports that 10 or more times per year, most frequently upon the death or incarceration of a practitioner, patient records are abandoned and patients cannot access their own records. The DOH attempts to secure the abandoned records but does not have the manpower or storage capacity to assume control.[13]

Dispensing Practitioner Facility Inspections

Section 465.0276(3), F.S., requires the DOH to inspect any facility where a dispensing practitioner dispenses medicinal drugs in the same manner, and with the same frequency, as it inspects pharmacies to determine whether the practitioner is in compliance with all applicable statutes and rules. The DOH currently inspects pharmacies upon opening, annually, when they change locations, and when changing ownership.[14] The DOH inspects a dispensing practitioner's practice location(s) prior to the registration being added to the practitioner's license and annually thereafter.[15]

Dispensing practitioners can dispense any prescription medication in their office, except Schedule II and III controlled substances. This prohibition against dispensing controlled substances does not apply to:

- The dispensing of complimentary packages of medicinal drugs which are labeled as a drug sample or complimentary drug to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect;
- The dispensing of controlled substances in the health care system of the Department of Corrections;

[13] *Supra note 20*.
[14] Florida Dep't of Health, *Inspection Programs – Who We Inspect* http://www.floridahealth.gov/licensing-and-regulation/enforcement/inspection-program/index.html, (last visited Dec. 23, 2015).
[15] *Id*.

- In connection with a surgical procedure, and then no more than a 14-day supply;
- In an approved clinical trial;
- In a medication-assisted opiate treatment facility licensed under s. 397.427, F.S.; or
- In a hospice facility licensed under part IV of chapter 400.[16]

During the last two fiscal years, the DOH conducted 15,062 dispensing practitioner inspections with a passing rate of 99 percent.[17]

Council on Certified Nursing Assistants

Section 464.2085, F.S., creates the council on certified nursing assistants (CNA) within the DOH, under the board of nursing. The council consists of two members who are registered nurses, one member who is a licensed practical nurse, and two CNAs who are appointed by the State Surgeon General. The duties of the council are to make recommendations to the DOH and the board on:

- Policies and procedures for the certification of nursing assistants;
- Rules regulating the education, training, and certification process for nursing assistants; and
- Concerns and problems of certified nursing assistants to improve safety in the practice.

Historically, the council met every two months in conjunction with board of nursing meetings at an estimated cost of $40,000 per year. The council's last face-to-face meeting was in 2013. Beginning in 2014, the council met by telephone conference call only on an as-needed basis. Both the board of nursing and the council have supported abolishment of the council since 2014.[18]

Advisory Council of Medical Physicists

The Advisory Council of Medical Physicists (advisory council) was created in 1997 in s. 483.901(3), F.S., to advise the DOH in regulating the practice of medical physics. The nine-member advisory council is charged with recommending rules to administer the regulation of the practice of medical physics, recommending practice standards, and developing and recommending CE requirements for licensed medical physicists.

According to the DOH, the advisory council fulfilled its statutory role and last met in December 1998. The State Surgeon General appointed new members in 2015 and the advisory council will meet for the first time in 17 years at an estimated cost of $3,535 per meeting. The DOH advises that an Advisory Council on Radiation Protection includes medical physicists as council members, and that group may be used for guidance on matters of practice and public safety pertaining to the practice of medical physics.[19]

[16] *See* s. 465.0276(1)(b), F.S.
[17] *Supra note 20*, at p.8. The restrictions on dispensing controlled substances listed in Schedule II or Schedule III was enacted in 2011. *See*, ch. 2011-141, s. 15, Laws of Florida.
[18] *Supra note 20*, at p.8.
[19] *Supra note 20*, at p. 9.

Research Programs

The James and Esther King Biomedical Research Program, administered by the DOH Biomedical Research Advisory Council, is funded by the proceeds of the Lawton Chiles Endowment Fund.[20] The purpose of the program is to provide an annual and perpetual source of funding to support research on health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.

The William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, is also administered by the DOH Biomedical Research Advisory Council and funded pursuant to s. 215.5602(12), F.S. The purpose of the program is to advance progress towards cures for cancer.

Every year the council is required to submit a progress report on the programs it administers to the Governor, State Surgeon General, President of the Senate, and Speaker of the House of Representatives which must include:

- A list of current research projects;
- A list of recipients of grants or fellowships;
- A list of peer reviewed publications in journals from research projects;
- The state ranking and total amount of biomedical research funding currently flowing into the state from the National Institutes of Health;
- New grants awarded;
- Description of the progress made towards program goals; and
- Recommendations to further the mission of the programs.

Starting in the 2011-2012 fiscal year, $25 million of the funds deposited into the Health Care Trust Fund[21] were reserved for research on tobacco-related, or cancer-related, illnesses and were transferred to the Biomedical Research Trust Fund. Five million dollars of those funds were required to be appropriated to the James and Esther King Biomedical Research Program; and $5 million to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.[22]

Beginning in 2014, any entity performing cancer research and receiving funds without statutory reporting requirements is required to submit an annual progress report to the President of the Senate and the Speaker of the House of Representatives on the use of those funds. The report must include:

- A description of the general use of the funds;
- A description of research funded by the programs;
- A description of any fixed costs for a particular project, the need for the project, how the project would be utilized, and a timeline for the project; and
- A description of any federal or private grants or donations generated as a result of the appropriation or activities.

[20] *See* s. 215.5601, F.S.
[21] *See* ss. 210.011(9) and 210.276(7), F.S.
[22] *See* s. 381.922, F.S.

The Ed and Ethel Moore Alzheimer's Disease Research Program is a research program within the DOH created to fund research leading to prevention or a cure for Alzheimer's disease. It is administered by the DOH Alzheimer's Disease Research Grant Advisory Board.[23] Its funding is subject to legislative appropriation. The board is required to submit a yearly progress report on the programs under its purview to the Governor, President of the Senate, Speaker of the House of Representatives, and State Surgeon General by February 15. The report must include:

- A list of current research projects;
- A list of recipients of grants or fellowships;
- A list of peer reviewed publications in journals from research projects;
- The state ranking and total amount of Alzheimer's disease research funding currently flowing into the state from the National Institutes of Health;
- New grants awarded under the program;
- Description of the progress made towards program goals; and
- Recommendations to further the mission of the programs.

III. Effect of Proposed Changes:

This bill updates various sections of law relating to the regulation of health care practitioners and research programs within the DOH.

Initial Licensure Requirements

Military Health Care Practitioners [24]

The bill amends s. 456.024, F.S., to delete provisions relating to temporary licenses for military spouses and delineates that the following military personnel and military-connected persons are eligible for health care practitioner licenses in Florida:

- A person who serves, or has served, in the U.S. Armed Forces, Reserves or National Guard;
- A person who serves, or has served, on active duty as a health care practitioner[25] in the U.S. Armed Forces as a health care practitioner in the U.S. Public Health Service; or
- A health care practitioner in another state or U.S. jurisdiction whose spouse serves on active duty in the U.S. Armed Forces.

The bill authorizes the Department of Health (DOH) to waive fees and issue licenses to a person who:

- Submits a complete application form;
- Is a member of the military and submits proof that he or she will receive an honorable discharge either six months before, or six months after the date of the application; , and
    - Holds an active, unencumbered license in another state or U.S. Jurisdiction with no disciplinary action in the preceding five years;

[23] The activities of the board are exempt from chapter 120. Section 381.82(5), F.S.
[24] See section 7 of the bill.
[25] The bill defines the term "health care practitioner" as those defined in 456.001, F.S. and Part IV of Ch. 468.

  - Is a military health care practitioner in a profession that does not require licensure in another state or U.S. jurisdiction,[26] if the applicant submits to the DOH evidence of military training or experience equivalent to that required in Florida and evidence of a passing score on a regional or national standards organization exam, if one is required in Florida; or
  - Is a health care practitioner in a profession that does not require licensure in other states, if the applicant can provide evidence to the DOH of training or experience equivalent to that required in Florida and evidence of a passing score on a regional or national standards organization exam, if one is required in Florida; and
- Attests that he or she is not under licensure disciplinary preceding anywhere;
- Actively practiced the profession for which licensure is sought for three years preceding the date of the application; and
- Submits a set of fingerprints for a background screening.

The bill eliminates the requirement that a military spouse who has been issued a temporary dental license may practice only under the supervision of a Florida dentist.

The bill also makes military-trained EMTs or paramedics eligible for certification in Florida under ch. 401, F.S.,[27] if they provide proof of:
- A current EMT or paramedic certification or registration that is considered by the DOH to be nationally recognized;
- Successful completion of a DOH-approved training program as equivalent to the most recent EMT-Basic or EMT-Paramedic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation; and
- A current certificate of successful course completion in cardiopulmonary resuscitation or advanced cardiac life support.

The bill creates s.456.0241, F.S.,[28] which authorizes the DOH to issue temporary certificates to active duty military health care practitioners to practice, if the applicant meets all of the following requirements:
- Submits proof that he or she will be practicing pursuant to a military platform[29];
- Submits a complete application and fee;
- Provides proof of:
  - Having a valid and unencumbered license to practice as a health care professional in another state or U.S. jurisdiction; or

[26] Professions not licensed in all states: Respiratory therapists (and assistants), Clinical Laboratory Personnel, Medical Physicists, Opticians, Athletics trainers, Electrologists, Nursing home administrators, Midwives, Orthotists (and assistants), Prosthetists (and assistants), Pedorthotists (and assistants), Orthotic fitters (and assistants), Certified chiropractic physician assistants, Pharmacy Technicians.
[27] See section 5 of the bill.
[28] See section 8 of the bill.
[29] Section 456.0241, F.S., defines a "Military platform" as a military training agreement with a non-military health care provider which is designed to develop and support medical, surgical, or other health care treatment opportunities in the nonmilitary health care provider setting so that military health care practitioners may develop and maintain technical proficiency to meet the present and future health care needs of the United States Armed Forces. Such agreements may include training affiliation agreements and external resource sharing agreements.

    - Being a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required for practice in the United States Armed Services; and Provides evidence of military training and experience substantially equivalent to the requirements for licensure in this state to practice in that profession;
- Attests that he or she is not subject to any disciplinary proceeding where he or she holds a license or by the United States Department of Defense;
- Has been determined to be competent in the profession for which he or she is applying for a temporary certificate; and
- Submits a set of fingerprints for a background if required by the profession for which he or she is applying for a temporary certificate.

The temporary certificates expires six months after issuance but may be renewed upon proof of the certificate holder receiving continuing orders in this state and that he or she continues to be a military platform participant. All provision of ch. 456, F.S., apply to these licensees except the practitioner profile requirements of ss. 456.039-456.046, F.S.

Chiropractic Physicians[30]

The bill amends s.460.402, F.S, to exempt a chiropractic physician from regulation under ch. 460, F.S., regulation when he or she holds an active license in another jurisdiction and is performing chiropractic procedures or demonstrating equipment or supplies for educational purposes at a board-approved continuing education program.

Temporary Licensure for Medical Physicists

The bill amends s. 483.901, F.S., to allow the DOH to issue a temporary license for no more than one year upon proof that the physicist has completed a residency program and payment of a fee set forth by rule. The DOH may adopt by rule requirements for temporary licensure and renewal of temporary licenses.

HIV and AIDS Course Requirement - Deleted[31]

The bill amends s. 381.0034, F.S., and repeals s. 468.1201, F.S., to delete the requirement that applicants under part IV of ch. 468, F.S., (radiological personnel), medical physicists under ch.483, F.S., speech and language pathology practitioners, and audiology practitioners, must complete courses in HIV and AIDS before their license may be initially issued. According to the DOH, this will accelerate the initial licensure process and reduce costs to licensees.[32]

Medical Errors Course Requirement - Deleted [33]

The bill amends s. 456.013(7), F.S., to delete the requirement that health care practitioners take two hours of continuing education (CE) in medical errors before a license may be issued but keeps that requirement for biennial renewal. The bill clarifies that the two course hours count toward the total required CE hours for renewal and are not in addition to the required hours.

[30] See Section 16 of the bill
[31] See sections 1 and 18 of the bill.
[32] *Supra note 20* at pp. 9 and 12.
[33] See section 2 of the bill.

Licensure Renewal Requirements

***CE Tracking*[34]**

The bill moves the requirement that DOH must establish an electronic CE tracking system which integrates tracking licensee CEs with the DOH licensure and renewal process from s. 456.025, F.S., to a newly created s. 456.0361, F.S. The bill prohibits the DOH from renewing licenses unless the licensee's CE requirements are complete, authorizes the imposition of additional penalties under the applicable practice act for the failure to comply with CE requirements, and authorizes the DOH to adopt rules to implement this section. This codifies in statute DOH's new CE tracking system and allows for uniformity in handling CEs across the various professions.

Accordingly, the bill amends ss. 457.107(3), 458.347(4)(e)3, 459.022(4)(e)3., 466.0135(3), 466.014, 466.032(5), 484.047(2), and 486.109(4), F.S., to simplify and conform the license renewal process for acupuncturists, physician assistants, dentists, dental hygienists, dental laboratories, hearing aid specialists, and physical therapists by eliminating the requirement of an affidavit or written statement attesting to the completion of the required CEs for the biennial renewal period, and by eliminating the DOH's authority to request a licensee, with or without cause, to produce documentation of his or her completed CEs for the biennial renewal period.[35]

Similarly, the bill amends s. 463.007, F.S., to clarify and conform the CE requirements of an optometrist as a condition of license renewal and amends s. 464.203, F.S., to require CNAs to complete 24 CE hours of in-service training every biennium, rather than requiring hours annually. This change matches the two-year renewal cycle.[36]

***Felons, Medicaid Fraud, and Excluded Individuals*[37]**

The bill amends s. 456.0635(2), F.S., to delete the exception to the requirement that a board or the DOH must deny the initial licensure of candidates or applicants who were convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies primarily relating to health care fraud; have been terminated for cause from a Medicaid program; or who are listed on the U.S. Department of Health and Human Services' List of Excluded Individuals and Entities. The exception currently applies to candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, and who applied for licensure after July 1, 2012. Under the bill, these individuals are unable to re-apply unless their sentence, and any probation, is scheduled to end within the time frame set out in s. 256.0635(2), F.S. Similar grounds exist for denial of a license renewal under s. 456.0635(3), F.S.

Licensure Regulation Costs[38]

The bill amends s. 456.025, F.S., to include a method to address professions which operate in a chronic deficit and which have reached their statutory fee cap. The bill:

[34] See sections 4 and 5 of the bill.
[35] See sections 8, 9, 14, 15, 16, 19 and 20 of the bill.
[36] See sections 10 and 11 of the bill.
[37] See section 7 of the bill.
[38] See section 4 of the bill.

- Deletes the requirement for the DOH to increase license fees if the cap has not been reached;
- Deletes the requirement to include recommendations for increases to fee caps in the annual report;
- Deletes rule authority to authorize advances to the profession's account with interest;
- Deletes the prohibition on using funds from one profession for operating another profession;
- Allows the DOH to waive the deficit profession's allocated indirect administrative and operational costs until the profession has a positive cash balance; and
- Allows cash in the unlicensed activity account of the profession whose indirect costs have been waived to be transferred to the operating account up to the amount of the deficit.

According to the DOH, as of June 30, 2014, three of 34 professions regulated under ch. 456, F.S. were in a chronic cash flow deficit and at their statutory fee cap. These three professions are dentistry, electrolysis, and midwifery. The total amount of the deficit was $3,682,993.[39]

The bill deletes the requirement that the chairpersons of the boards and councils meet annually to review the long-range policy plan and current and proposed fee schedules and recommend statutory changes relating to fees and fee caps for compilation by the DOH for inclusion in its annual report to the Legislature.

Council on Certified Nursing Assistants (CNA)[40]

The bill repeals s. 464.2085, F.S., which created the Council on Certified Nursing Assistants within the DOH under the Board of Nursing. Under the bill, the Board of Nursing will assume responsibility for all matters relating to CNAs.[41]

Advisory Council of Medical Physicists[42]

The bill repeals the advisory council in s. 483.901(3), F.S.

Ownership and Control of Patient Records[43]

The bill amends s. 456.057(20), F.S., to require DOH approval of all board-appointed medical records custodians for the patient medical records of a practitioner who has died, become incapacitated, or abandoned his or her records. The bill further authorizes the DOH to contract with a third party to function as the medical records custodian in these instances and designates the vendor the "records owner" under the same disclosure and confidentiality requirements imposed on licensees.

[39] *Supra note* 20 at p.10.
[40] See section 12 of the bill.
[41] *Supra note* 20 at p.11.
[42] See section 18 of the bill.
[43] See section 6 of bill.

Dispensing Practitioner Facility Inspections[44]

The bill amends s.465.0276, F.S., to eliminate any required DOH inspection of the facilities of dispensing practitioners. Dispensing practitioners will still be required to register with their appropriate boards[45] but there will no longer be any statutory mandate for the DOH to inspect those facilities within specified timeframes. The DOH may inspect dispensing practitioner locations at such times as it determines necessary as a random, unannounced inspection or during the course of an investigation.[46] The DOH indicates that due to the restrictions on dispensing controlled substances in Schedules II or III, the frequency and manner in which inspections are conducted may no longer be necessary.[47]

James and Esther King Biomedical Research Program, William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program and Ed and Ethel Moore Alzheimer's Disease Research Program[48]

The bill amends s. 215.5602(10), F.S., and adds identical language as a new subsection 6 to s. 381.922, F.S., to require more stringent annual reporting requirements for the DOH Biomedical Research Advisory Council which administers both the James and Esther King Biomedical Research Program for research on tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease, and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program. Specifically, the bill requires the reports for each program to include:

- For each research project supported by grants or fellowships awarded under the program:
  - A summary of the research project and results;
  - The status of the research, including estimated date of completion;
  - The amount of the grant awarded and the estimated or actual cost of the project;
  - A list of the principal investigators;
  - The title, citation, and summary of findings in a peer-reviewed journal publications from the research;
  - The source and amount of any federal, state, or local government grants or donations or private grants or donations generated as a result of the research project;
  - The status of any patent generated from the research and an economic analysis of the impact of the patent; and
  - A list of the postsecondary educational institutions involved in the research, with a description of each postsecondary educational institution's involvement; and the number of students receiving training or performing research in the project.
- The state ranking and amount of biomedical research funding coming into the state from the National Institutes of Health;
- A description of the progress towards the program's goals; and
- Recommendations to further the mission of the programs.

[44] See section 13 of the bill.
[45] Section 465.0276(2)(a), F.S.
[46] *See* s. 456.069, F.S.
[47] See Florida Dep't of Health, *Senate Bill 918 Agency Analysis*, pp. 11-12, (Nov. 20, 2015) (on file with the Senate Committee on Health Policy).
[48] See sections. 1, 3 and 4 of the bill.

The bill also amends s. 215.5602(12), F.S., to require more stringent annual reporting requirements for research entities currently without statutory reporting requirements, like the Ed and Ethel Moore Alzheimer's Disease Research Program. The bill requires their annual report to include:

- A describe the general use of the funds;
- A summary of research, funded, and:
  - The status of the research, including whether the research has concluded;
  - The results or expected results; and
  - The names of the principal investigators;
  - The title, citation, and summary of findings in a peer-reviewed journal publication from the research;
  - The status of a patent, if any, generated from the research and an economic analysis of the impact of the resulting patent;
  - The list of the postsecondary educational institutions involved in the research, a description of each postsecondary educational institution's involvement in the research; and the number of students receiving training or performing research.

The bill authorizes the balance of any appropriation from the General Revenue Fund for the Ed and Ethel Moore Alzheimer's Disease Research Program which is not disbursed but which is obligated by June 30 of the fiscal year in which the funds are appropriate to be carried forward for up to five years after the effective date of the original appropriation.

Technical Revisions and Effective Date

The bill makes technical and conforming changes and reenacts s. 921.022, F.S.

The bill is effective July 1, 2016.

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:

PCS/CS/SB 918 will reduce the costs associated with initial applications for licensure, and renewals, as practitioners will not incur the costs of taking additional specific courses, or for obtaining notarized affidavits before initial licensure or renewal. Section 12 of the bill will prevent practitioners who are prohibited from renewing their licenses by s. 456.0635(3), F.S., from becoming licensed pursuant to s.456.0635(2), F.S.

C. Government Sector Impact:

The bill:

- May require the DOH to incur costs related to maintaining the security and distribution of medical records for practitioners who have left practice. The DOH estimates a recurring coast of approximately $4,020 for which current spending authority is reported to be adequate to absorb.
- Eliminates the CNA Council, which will result in a cost savings to the DOH of approximately $40,000 per fiscal year due to the elimination of costs associated with face-to-face meetings.
- Eliminates the DOH's costs associated with the annual routine inspection of dispensing practitioners' facilities. The DOH reports that based on Fiscal Year 2014-2015 data, the total cost to complete these mandatory inspections was $597,707.
- Eliminates the Advisory Council of Medical Physicists which will result in a cost avoidance for reactivating the advisory council.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 20 of the bill eliminates the DOH's routine inspection of dispensing practitioners' facilities. Although speculative, this lack of routine oversight could result in a public health and safety risk to patients due to issues relating to cleanliness, improper storage and labeling of medications, use of counterfeit medication, etc. However, dispensing practitioners may experience less disruption in routine practice due to fewer inspections.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.5602, 381.0034, 381.82, 381.922, 456.013, 456.024, 456.025, 456.0361, 456.057, 456.0635, 457.107, 458.347, 459.022, 460.402, 463.007, 464.203, 465.0276, 466.0135, 466.014, 466.032, 483.901, 484.047, 486.109, 499.028, and 921.0022.

This bill creates section 456.0241 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 464.2085 and 468.1201.

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 Health and Human Services on January 26, 2016:
The committee substitute:

- Changes the short title of the bill from "An act relating to licensure of health care professionals" to "An act relating to the Department of Health;"
- Mandates more stringent reporting requirements for the James and Esther King Biomedical Research Program, the William G. "Bill" Bankhead, Jr., David Coley Cancer Research Program, the Ed and Ethel Moore Alzheimer's Disease Research Program, within the Department of Health (DOH), and entities that receive a specific appropriation for biomedical research and related functions;
- Authorizes the DOH to issue certificates to military trained emergency medical technicians (EMTs) and paramedics under certain circumstances and authorizes the issuance of temporary certificates to active duty military licensed in another state and practicing in Florida pursuant to a military platform;
- Exempts a chiropractic physician from regulation in Florida when he or she holds an active license in another jurisdiction and is performing chiropractic procedures or demonstrating equipment or supplies for educational purposes at a board-approved continuing education program; and
- Allows unspent, but obligated, general revenue that is appropriated to the Ed and Ethel Moore Alzheimer's Disease Research Program to be carried forward on June 30 of each fiscal year for up to five years after the effective date of the original appropriation.

CS by Health Policy on January 11, 2016:
The committee substitute recognizes a passing score for examinations approved by a regional, in addition to a national, standards organization for both the military and spousal exceptions from licensure in another state and provides a technical clarification pertaining to the description of the spouse's practice in health care.

The committee substitute also deletes sections pertaining to the Impaired Practitioner program.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 341 and 342
insert:

Section 5. Subsection (3) of section 384.23, Florida Statutes, is amended to read:

384.23 Definitions.—

(3) "Sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease, determined by rule of the department to be sexually transmissible, to be a threat to the

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public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, ~~regulation~~ and treatment. The department must, by rule, determine ~~In considering~~ which diseases are to be designated as sexually transmissible diseases, ~~the department shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immune deficiency virus infection for designation,~~ and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention ~~centers for disease control~~ and other nationally recognized medical authorities in making that determination. Not all diseases that are sexually transmissible need be designated for the purposes of this act.

Section 6. Subsection (7) is added to section 384.27, Florida Statutes, to read:

384.27 Physical examination and treatment.—

(7)(a) A health care practitioner licensed under chapter 458 or chapter 459 or certified under s. 464.012 may provide expedited partner therapy if the following requirements are met:

1. The patient has a laboratory-confirmed or suspected clinical diagnosis of a sexually transmissible disease;

2. The patient indicates that he or she has a partner with whom the patient has engaged in sexual activity before the diagnosis of the sexually transmissible disease; and

3. The patient indicates that his or her partner is unable or unlikely to seek clinical services in a timely manner.

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(b) A pharmacist licensed under chapter 465 may dispense medication for a person diagnosed with a sexually transmissible disease pursuant to a prescription to treat that person's partner, regardless of whether the person's partner has been personally examined by the prescribing health care practitioner.

(c) A pharmacist or health care practitioner must check for potential allergic reactions, in accordance with the prevailing professional standard of care, before dispensing a prescription or providing a medication.

(d) The department may adopt rules to implement this subsection.

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

And the title is amended as follows:

Delete line 21

and insert:

reporting requirements; amending s. 384.23, F.S.; requiring the department to designate by rule sexually transmissible diseases; deleting references to specific diseases that may be considered sexually transmissible diseases; amending s. 348.27, F.S.; authorizing certain health care practitioners to provide expedited partner therapy under certain circumstances; authorizing licensed pharmacists to dispense medication to a person diagnosed with a sexually transmissible disease under a prescription written for his or her partner, regardless of whether the person for whom the prescription was written has been physically examined by the prescribing

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practitioner; requiring that a pharmacist or a health care practitioner check for allergies before dispensing a prescription or providing medication; authorizing the department to adopt rules; amending s. 401.27, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete lines 353 - 355
and insert:
all other qualifications for renewal, including continuing education requirements, and pays a $25 late fee. The certificateholder also must pass the certification examination to reactivate the certificate during the second of the two renewal periods. Reactivation

357670

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 396 - 530
and insert:
Section 7. Subsection (3) of section 456.024, Florida Statutes, is amended to read:
456.024 Members of Armed Forces in good standing with administrative boards or the department; spouses; licensure.—
(3)(a) A person is eligible for licensure as a health care practitioner in this state if he or she:

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1. ~~who~~ Serves or has served as a health care practitioner in the United States Armed Forces, the United States Reserve Forces, or the National Guard;

2. ~~or a person who~~ Serves or has served on active duty with the United States Armed Forces as a health care practitioner in the United States Public Health Service; or

3. Is a health care practitioner, other than a dentist, in another state, the District of Columbia, or a possession or territory of the United States and is the spouse of a person serving on active duty with the United States Armed Forces, ~~is eligible for licensure in this state~~.

The department shall develop an application form, and each board, or the department if there is no board, shall waive the application fee, licensure fee, and unlicensed activity fee for such applicants. For purposes of this subsection, "health care practitioner" means a health care practitioner as defined in s. 456.001 and a person licensed under part III of chapter 401 or part IV of chapter 468.

(b) ~~(a)~~ The board, or the department if there is no board, shall issue a license to practice in this state to a person who:

1. Submits a complete application.

2. If he or she is member of the United States Armed Forces, the United States Reserve Forces, or the National Guard, submits proof that he or she has received ~~Receives~~ an honorable discharge within 6 months before, or will receive an honorable discharge within 6 months after, the date of submission of the application.

3.a. Holds an active, unencumbered license issued by

another state, the District of Columbia, or a possession or territory of the United States and who has not had disciplinary action taken against him or her in the 5 years preceding the date of submission of the application;

b. Is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required to practice in the United States Armed Forces, if he or she submits to the department evidence of military training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state; or

c. Is the spouse of a person serving on active duty in the United States Armed Forces and is a health care practitioner in a profession, excluding dentistry, for which licensure in another state or jurisdiction is not required, if he or she submits to the department evidence of training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state.

4. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

5. Actively practiced the profession for which he or she is

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applying for the 3 years preceding the date of submission of the application.

6. Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

(c) ~~(b)~~ Each applicant who meets the requirements of this subsection shall be licensed with all rights and responsibilities as defined by law. The applicable board, or the department if there is no board, may deny an application if the applicant has been convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state.

(d) ~~(c)~~ An applicant for initial licensure under this subsection must submit the information required by ss. 456.039(1) and 456.0391(1) no later than 1 year after the license is issued.

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

And the title is amended as follows:

Delete lines 40 - 42

and insert:

specified criteria; creating s.

309734

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 609 - 615

and insert:

(6) An applicant who is issued a temporary certificate to practice as a dentist pursuant to this section must practice under the indirect supervision, as defined in s. 466.003, of a dentist licensed pursuant to chapter 466.

(7) The department shall establish by rule application and renewal fees not to exceed $50 for a temporary certificate

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issued under this section.

(8) Application must be made on a form prepared and furnished by the department.

(9) The department shall adopt rules necessary to implement this section.

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

And the title is amended as follows:

Delete line 58

and insert:

to receive a temporary certificate; requiring certain temporary certificateholders to practice under the indirect supervision of a dentist; requiring the

675498

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 737 and 738
insert:

Section 10. Effective July 1, 2017, section 456.031, Florida Statutes, is amended to read:

456.031 Requirement for instruction on domestic violence and human trafficking.—

(1)(a) The appropriate board shall require each person licensed or certified under chapter 458, chapter 459, part I of

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chapter 464, chapter 466, chapter 467, chapter 490, or chapter 491 to complete a 2-hour continuing education course, approved by the board, on domestic violence, as defined in s. 741.28, and on human trafficking, as defined in s. 787.06(2), as part of every third biennial relicensure or recertification.

1. The domestic violence section of the course must ~~shall~~ consist of data and information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.

2. The human trafficking section of the course must consist of data and information on the types of human trafficking, such as labor and sex, and the extent of human trafficking; factors that place a person at greater risk for being a victim of human trafficking; management of medical records of patients who are human trafficking victims; patient safety and security; public and private social services available for rescue, food, clothing, and shelter referrals; hotlines for reporting human trafficking maintained by the National Human Trafficking Resource Center and the United States Department of Homeland Security; validated assessment tools for identifying human trafficking victims and general indicators that a person may be

675498

a victim of human trafficking; procedures for sharing information related to human trafficking with a patient; and referral options for legal and social services.

(b) Each ~~such~~ licensee or certificateholder shall submit confirmation of having completed the continuing education ~~such~~ course, on a form provided by the board, when submitting fees for every third biennial relicensure or recertification ~~renewal~~.

(c) The board may approve additional equivalent courses that may be used to satisfy the requirements of paragraph (a). Each licensing board that requires a licensee to complete a continuing ~~an~~ educational course pursuant to this subsection may include the hours ~~hour~~ required for completion of the course in the total hours of continuing education required by law for the ~~such~~ profession, unless the continuing education requirements for the ~~such~~ profession consist of fewer than 30 hours of continuing education biennially.

(d) Any person holding two or more licenses subject to ~~the provisions of~~ this subsection shall be permitted to show proof of completion of ~~having taken~~ one board-approved course on domestic violence and human trafficking~~,~~ for purposes of relicensure or recertification for additional licenses.

(e) Failure to comply with the requirements of this subsection shall constitute grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k). In addition to discipline by the board, the licensee shall be required to complete the board-approved ~~such~~ course under this subsection.

(2) Each board may adopt rules to carry out the provisions of this section.

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Delete line 1451
and insert:
Section 31. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 81
and insert:
annual report to the Legislature; amending s. 456.031, F.S.; providing that certain licensing boards must require specified licensees to complete a specified continuing education course that includes a section on human trafficking as a condition of relicensure or recertification; providing requirements and procedures related to the course; creating s.

Delete line 136
and insert:
effective dates.

760688

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 1291 and 1292
insert:

Section 27. Section 486.102, Florida Statutes, is amended to read:

486.102 Physical therapist assistant; licensing requirements.—To be eligible for licensing by the board as a physical therapist assistant, an applicant must:

(1) Be at least 18 years old;

760688

(2) Be of good moral character; and

(3)(a) Have been graduated from a school giving a course of not less than 2 years for physical therapist assistants, which school has been approved for the educational preparation of physical therapist assistants by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education~~, which includes, but is not limited to, any regional or national institutional accrediting agencies recognized by the United States Department of Education or the Commission on Accreditation for Physical Therapy Education (CAPTE),~~ at the time of her or his graduation, and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided;

(b) Have been graduated from a school giving a course for physical therapist assistants in a foreign country, ~~and~~ have educational credentials deemed equivalent to those required for the educational preparation of physical therapist assistants in this country, as recognized by the appropriate agency as identified by the board, and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided; or

(c) Be entitled to licensure without examination as provided in s. 486.107.

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

And the title is amended as follows:

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Between lines 131 and 132
insert:
amending s. 486.102, F.S.; deleting references to specific accrediting agencies;

327676

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment to Amendment (760688)

Delete line 14
and insert:
has been approved for the educational preparation of

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576-02645-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the Department of Health; amending s. 215.5602, F.S.; revising the reporting requirements for the Biomedical Research Advisory Council under the James and Esther King Biomedical Research Program; revising the reporting requirements for entities that perform or are associated with cancer research or care and that receive a specific appropriation; amending s. 381.0034, F.S.; revising the requirements for certain license applications; amending s. 381.82, F.S.; revising the reporting requirements for the Alzheimer's Disease Research Grant Advisory Board under the Ed and Ethel Moore Alzheimer's Disease Research Program; providing for the carryforward of any unexpended balance of an appropriation for the Ed and Ethel Moore Alzheimer's Disease Research Program; amending s. 381.922, F.S.; requiring the Biomedical Research Advisory Council under the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program to submit a report to the Legislature; providing reporting requirements; amending s. 401.27, F.S.; increasing the length of time a certificate may remain in an inactive status; clarifying the process for reactivating and renewing a certificate in an inactive status; authorizing emergency medical technicians or paramedics that are trained in the military to apply for certification; deleting a requirement that

857014

576-02645-16

emergency medical technicians or paramedics who are trained outside the state or are trained in the military successfully complete a certification examination; amending s. 456.013, F.S.; revising course requirements for obtaining a certain license; amending s. 456.024, F.S.; revising the eligibility criteria for certain members of the Armed Forces of the United States and their spouses to obtain licensure to practice as a health care practitioner in this state; authorizing the spouse of an active duty military member to be licensed as a health care practitioner in this state if he or she meets specified criteria; deleting temporary professional licensure for spouses of active duty members of the Armed Forces of the United States; creating s. 456.0241, F.S.; establishing a temporary certificate for active duty health care practitioners; defining terms; authorizing the department to issue a temporary certificate to active duty military health care practitioners to allow them to practice in specified professions; providing eligibility requirements; requiring the department to verify information submitted in support of establishing eligibility; providing for the automatic expiration of the temporary certificate within a specified time frame; providing for renewal of the temporary certificate if certain conditions are met; providing an exemption from specified requirements to military practitioners who apply for a temporary certificate; providing

circumstances under which an applicant is ineligible to receive a temporary certificate; requiring the department to adopt by rule application and renewal fees, which may not exceed a specified amount; requiring the department to adopt necessary rules; amending s. 456.025, F.S.; deleting the requirement for an annual meeting of chairpersons of Division of Medical Quality Assurance boards and councils; deleting the requirement that certain recommendations be included in a report to the Legislature; deleting a requirement that the Department of Health set license fees and recommend fee cap increases in certain circumstances; providing that a profession may operate at a deficit for a certain time period; deleting a provision authorizing the department to advance funds under certain circumstances; deleting a requirement that the department implement an electronic continuing education tracking system; authorizing the department to waive specified costs under certain circumstances; revising legislative intent; deleting a prohibition against the expenditure of funds by the department from the account of a profession to pay for the expenses of another profession; deleting a requirement that the department include certain information in an annual report to the Legislature; creating s. 456.0361, F.S.; requiring the department to establish an electronic continuing education tracking system; prohibiting the department from renewing a license unless the licensee has complied with all continuing

education requirements; authorizing the department to adopt rules; amending s. 456.057, F.S.; revising a provision for a person or an entity appointed by the board to be approved by the department; authorizing the department to contract with a third party to provide record custodian services; amending s. 456.0635, F.S.; deleting a provision on applicability relating to the issuance of licenses; amending s. 457.107, F.S.; deleting a provision authorizing the Board of Acupuncture to request certain documentation from applicants; amending ss. 458.347 and 459.022, F.S.; deleting a requirement that a physician assistant file a signed affidavit with the department; making technical changes; amending s. 460.402, F.S.; providing an additional exception to licensure requirements for chiropractic physicians; amending s. 463.007, F.S.; making technical changes; amending s. 464.203, F.S.; revising inservice training requirements for certified nursing assistants; deleting a rulemaking requirement; repealing s. 464.2085, F.S., relating to the Council on Certified Nursing Assistants; amending s. 465.0276, F.S.; deleting a requirement that the department inspect certain facilities; amending s. 466.0135, F.S.; deleting a requirement that a dentist file a signed affidavit with the department; deleting a provision authorizing the Board of Dentistry to request certain documentation from applicants; amending s. 466.014, F.S.; deleting a requirement that a dental hygienist

file a signed affidavit with the department; deleting a provision authorizing the board to request certain documentation from applicants; amending s. 466.032, F.S.; deleting a requirement that a dental laboratory file a signed affidavit with the department; deleting a provision authorizing the department to request certain documentation from applicants; repealing s. 468.1201, F.S., relating to a requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome; amending s. 483.901, F.S.; deleting provisions relating to the Advisory Council of Medical Physicists in the department; authorizing the department to issue temporary licenses in certain circumstances; authorizing the department to adopt rules; amending s. 484.047, F.S.; deleting a requirement for a written statement from an applicant in certain circumstances; amending s. 486.109, F.S.; deleting a provision authorizing the department to conduct a random audit for certain information; amending ss. 499.028 and 921.0022, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (10) and (12) of section 215.5602, Florida Statutes, are amended to read:

215.5602 James and Esther King Biomedical Research Program.—

(10) The council shall submit a fiscal-year progress report on the programs under its purview to the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by December 15. The report must include:

(a) For each ~~A list of~~ research project ~~projects~~ supported by grants or fellowships awarded under the program:~~.~~

1.~~(b)~~ A summary ~~list~~ of the research project and results or expected results of the research ~~recipients of program grants or fellowships~~.

2.~~(c)~~ The status of the research project, including whether it has concluded or the estimated date of completion.

3. The amount of the grant or fellowship awarded and the estimated or actual cost of the research project.

4. A list of the principal investigators on the research project.

5. The title, citation, and summary of findings of a publication ~~publications~~ in a peer-reviewed journal resulting from the ~~peer reviewed journals involving~~ research ~~supported by grants or fellowships awarded under the program~~.

6.~~(d)~~ The source and amount of any federal, state, or local government grants or donations or private grants or donations generated as a result of the research project.

7. The status of a patent, if any, generated from the research project and an economic analysis of the impact of the resulting patent.

8. A list of the postsecondary educational institutions involved in the research project, a description of each postsecondary educational institution’s involvement in the

research project, and the number of students receiving training or performing research in the research project.

(b) The state ranking and total amount of biomedical research funding currently flowing into the state from the National Institutes of Health.

~~(c) New grants for biomedical research which were funded based on research supported by grants or fellowships awarded under the program.~~

(c)~~(f)~~ Progress towards programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease.

(d)~~(g)~~ Recommendations to further the mission of the programs.

(12)(a) Beginning in the 2011-2012 fiscal year and thereafter, $25 million from the revenue deposited into the Health Care Trust Fund pursuant to ss. 210.011(9) and 210.276(7) shall be reserved for research of tobacco-related or cancer-related illnesses. Of the revenue deposited in the Health Care Trust Fund pursuant to this section, $25 million shall be transferred to the Biomedical Research Trust Fund within the Department of Health. Subject to annual appropriations in the General Appropriations Act, $5 million shall be appropriated to the James and Esther King Biomedical Research Program, $5 million shall be appropriated to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program created under s. 381.922.

(b) Beginning July 1, 2014, an entity that ~~which~~ performs or is associated with cancer research or care and that receives

a specific appropriation for biomedical research, research-related functions, operations or other supportive functions, or expansion of operations in the General Appropriations Act without statutory reporting requirements for the receipt of those funds, must submit an annual fiscal-year progress report to the President of the Senate and the Speaker of the House of Representatives by December 15. The report must:

1. Describe the general use of the funds.

2. Summarize ~~Specify~~ the research, if any, funded by the appropriation, and provide:

a. The status of the research, including whether the research has concluded.

b. The results or expected results of the research.

c. The names of the principal investigators performing the research.

d. The title, citation, and summary of findings of a publication in a peer-reviewed journal resulting from the research.

e. The status of a patent, if any, generated from the research and an economic analysis of the impact of the resulting patent.

f. The list of the postsecondary educational institutions involved in the research, a description of each postsecondary educational institution's involvement in the research, and the number of students receiving training or performing research.

3. Describe any fixed capital outlay project funded by the appropriation, the need for the project, how the project will be utilized, and the timeline for and status of the project, if applicable.


857014

576-02645-16

4. Identify any federal, state, or local government grants or donations or private grants or donations generated as a result of the appropriation or activities funded by the appropriation, if applicable and traceable.

Section 2. Subsection (3) of section 381.0034, Florida Statutes, is amended to read:

381.0034 Requirement for instruction on HIV and AIDS.—

(3) The department shall require, as a condition of granting a license under chapter 467 or part III of chapter 483 ~~the chapters specified in subsection (1)~~, that an applicant making initial application for licensure complete an educational course acceptable to the department on human immunodeficiency virus and acquired immune deficiency syndrome. Upon submission of an affidavit showing good cause, an applicant who has not taken a course at the time of licensure must ~~shall, upon an affidavit showing good cause,~~ be allowed 6 months to complete this requirement.

Section 3. Subsection (4) of section 381.82, Florida Statutes, is amended and subsection (8) is added to that section, to read:

381.82 Ed and Ethel Moore Alzheimer's Disease Research Program.—

(4) The board shall submit a fiscal-year progress report on the programs under its purview annually to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by February 15. The report must include:

(a) For each ~~A list of~~ research project ~~projects~~ supported by grants or fellowships awarded under the program:~~.~~


857014

576-02645-16

1.~~(b)~~ A summary ~~list~~ of the research project and results or expected results of the research ~~recipients of program grants or fellowships~~.

2.~~(c)~~ The status of the research project, including whether it has concluded or the estimated date of completion.

3. The amount of the grant or fellowship awarded and the estimated or actual cost of the research project.

4. A list of the principal investigators on the research project.

5. The title, citation, and summary of findings of a publication ~~publications~~ in a peer-reviewed journal resulting from the ~~journals involving~~ research ~~supported by grants or fellowships awarded under the program~~.

6.~~(d)~~ The source and amount of any federal, state, or local government grants or donations or private grants or donations generated as a result of the research project.

7. The status of a patent, if any, generated from the research project and an economic analysis of the impact of the resulting patent.

8. A list of postsecondary educational institutions involved in the research project, a description of each postsecondary educational institution's involvement in the research project, and the number of students receiving training or performing research under the research project.

(b) The state ranking and total amount of Alzheimer's disease research funding currently flowing into the state from the National Institutes of Health.

~~(c) New grants for Alzheimer's disease research which were funded based on research supported by grants or fellowships~~

~~awarded under the program.~~

(c) ~~(f)~~ Progress toward programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of Alzheimer's disease.

(d) ~~(g)~~ Recommendations to further the mission of the program.

(8) Notwithstanding s. 216.301 and pursuant to s. 216.351, the balance of any appropriation from the General Revenue Fund for the Ed and Ethel Moore Alzheimer's Disease Research Program which is not disbursed but which is obligated pursuant to contract or committed to be expended by June 30 of the fiscal year in which the funds are appropriated may be carried forward for up to 5 years after the effective date of the original appropriation.

Section 4. Subsection (6) is added to section 381.922, Florida Statutes, to read:

381.922 William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.—

(6) The Biomedical Research Advisory Council shall submit a report relating to grants awarded under the program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15 each year. The report must include:

(a) For each research project supported by grants awarded under the program:

1. A summary of the research project and results or expected results of the research.

2. The status of the research project, including whether it has concluded or the estimated date of completion.

3. The amount of the grant awarded and the estimated or actual cost of the research project.

4. A list of the principal investigators on the research project.

5. The title, citation, and summary of findings of a publication in a peer-reviewed journal resulting from the research.

6. The source and amount of any federal, state, or local government grants or donations or private grants or donations generated as a result of the research project.

7. The status of a patent, if any, generated from the research project and an economic analysis of the impact of the resulting patent.

8. A list of the postsecondary educational institutions involved in the research project, a description of each postsecondary educational institution's involvement in the research project, and the number of students receiving training or performing research in the research project.

(b) The state ranking and total amount of cancer research funding currently flowing into the state from the National Institutes of Health.

(c) Progress toward programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of cancer.

(d) Recommendations to further the mission of the program.

Section 5. Subsections (8) and (12) of section 401.27, Florida Statutes, are amended to read:

401.27 Personnel; standards and certification.—

(8) Each emergency medical technician certificate and each paramedic certificate will expire automatically and may be


857014

576-02645-16

renewed if the holder meets the qualifications for renewal as established by the department. A certificate that is not renewed at the end of the 2-year period will automatically revert to an inactive status for a period not to exceed two renewal periods ~~180 days~~. Such certificate may be reactivated and renewed within the two renewal periods ~~180 days~~ if the certificateholder meets all other qualifications for renewal, including completion of continuing education requirements and passage of the state certification examination, and pays a $25 late fee. Reactivation shall be in a manner and on forms prescribed by department rule.

(12) An applicant for certification as an emergency medical technician or paramedic who is trained outside the state or trained in the military must provide proof of current emergency medical technician or paramedic certification or registration that is considered by the department to be nationally recognized, successfully complete ~~based upon successful completion of~~ a training program approved by the department as equivalent to the most recent EMT-Basic or EMT-Paramedic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation, and hold a current certificate of successful course completion in cardiopulmonary resuscitation (CPR) or advanced cardiac life support for emergency medical technicians or paramedics, respectively, to be eligible for the certification ~~examination~~. ~~The applicant must successfully complete the certification examination within 2 years after the date of the receipt of his or her application by the department. After 2 years, the applicant must submit a new application, meet all eligibility requirements, and submit all fees to reestablish eligibility to~~


857014

576-02645-16

~~take the certification examination.~~

Section 6. Subsection (7) of section 456.013, Florida Statutes, is amended to read:

456.013 Department; general licensing provisions.—

(7) The boards, or the department when there is no board, shall require the completion of a 2-hour course relating to prevention of medical errors as part of the biennial ~~licensure and~~ renewal process. The 2-hour course counts toward ~~shall count towards~~ the total number of continuing education hours required for the profession. The course must ~~shall~~ be approved by the board or department, as appropriate, and must ~~shall~~ include a study of root-cause analysis, error reduction and prevention, and patient safety. In addition, the course approved by the Board of Medicine and the Board of Osteopathic Medicine must ~~shall~~ include information relating to the five most misdiagnosed conditions during the previous biennium, as determined by the board. If the course is being offered by a facility licensed pursuant to chapter 395 for its employees, the board may approve up to 1 hour of the 2-hour course to be specifically related to error reduction and prevention methods used in that facility.

Section 7. Paragraph (a) of subsection (3) and subsection (4) of section 456.024, Florida Statutes, are amended to read:

456.024 Members of Armed Forces in good standing with administrative boards or the department; spouses; licensure.—

(3)(a) A person is eligible for licensure as a health care practitioner in this state if he or she is:

1. A person who serves or has served as a health care practitioner in the United States Armed Forces, United States Reserve Forces, or the National Guard;


857014

576-02645-16

2. A ~~or a~~ person who serves or has served on active duty with the United States Armed Forces as a health care practitioner in the United States Public Health Service; or

3. A health care practitioner in another state, the District of Columbia, or a possession or territory of the United States whose spouse serves on active duty in the United States Armed Forces ~~is eligible for licensure in this state~~. The department shall develop an application form, and each board, or the department if there is no board, shall waive the application fee, licensure fee, and unlicensed activity fee for such applicants. For purposes of this subsection, the term "health care practitioner" means a health care practitioner as defined in s. 456.001 and a person licensed under part III of chapter 401 or part IV of chapter 468.

(b) ~~(a)~~ The board, or department if there is no board, shall issue a license to practice in this state to a person who:

1. Submits a complete application.

2. If he or she is a member of the military, submits proof of receipt of ~~Receives~~ an honorable discharge within 6 months before, or that he or she will receive an honorable discharge within 6 months after, the date of submission of the application.

3.a. Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the United States and who has not had disciplinary action taken against him or her in the 5 years preceding the date of submission of the application;

b. Is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required


857014

576-02645-16

to practice in the United States Armed Services, if the applicant submits to the department evidence of military training or experience substantially equivalent to the requirements for licensure in this state in that profession, and evidence that the applicant has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state; or

c. Is a health care practitioner in a profession for which licensure in another state or jurisdiction is not required and whose spouse serves on active duty in the United States Armed Forces, if the applicant submits to the department evidence of training or experience substantially equivalent to the requirements for licensure in this state in that profession, and evidence that the applicant has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state.

4. Attests that he or she is not, at the time of submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

5. Actively practiced the profession for which he or she is applying for the 3 years preceding the date of submission of the application.

6. Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the

applicant under this subsection using the National Practitioner Data Bank.

~~(4)(a) The board, or the department if there is no board, may issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States who submits to the department:~~

~~1. A completed application upon a form prepared and furnished by the department in accordance with the board's rules;~~

~~2. The required application fee;~~

~~3. Proof that the applicant is married to a member of the Armed Forces of the United States who is on active duty;~~

~~4. Proof that the applicant holds a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States, and is not the subject of any disciplinary proceeding in any jurisdiction in which the applicant holds a license to practice a profession regulated by this chapter;~~

~~5. Proof that the applicant's spouse is assigned to a duty station in this state pursuant to the member's official active duty military orders; and~~

~~6. Proof that the applicant would otherwise be entitled to full licensure under the appropriate practice act, and is eligible to take the respective licensure examination as required in Florida.~~

~~(b) The applicant must also submit to the Department of Law Enforcement a complete set of fingerprints. The Department of Law Enforcement shall conduct a statewide criminal history check and forward the fingerprints to the Federal Bureau of~~

~~Investigation for a national criminal history check.~~

~~(c) Each board, or the department if there is no board, shall review the results of the state and federal criminal history checks according to the level 2 screening standards in s. 435.04 when granting an exemption and when granting or denying the temporary license.~~

~~(d) The applicant shall pay the cost of fingerprint processing. If the fingerprints are submitted through an authorized agency or vendor, the agency or vendor shall collect the required processing fees and remit the fees to the Department of Law Enforcement.~~

~~(e) The department shall set an application fee, which may not exceed the cost of issuing the license.~~

~~(f) A temporary license expires 12 months after the date of issuance and is not renewable.~~

~~(g) An applicant for a temporary license under this subsection is subject to the requirements under s. 456.013(3)(a) and (c).~~

~~(h) An applicant shall be deemed ineligible for a temporary license pursuant to this section if the applicant:~~

~~1. Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;~~

~~2. Has had a health care provider license revoked or suspended from another of the United States, the District of Columbia, or a United States territory;~~

~~3. Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed from the data bank; or~~

~~4. Has previously failed the Florida examination required to receive a license to practice the profession for which the applicant is seeking a license.~~

~~(i) The board, or department if there is no board, may revoke a temporary license upon finding that the individual violated the profession's governing practice act.~~

~~(j) An applicant who is issued a temporary professional license to practice as a dentist pursuant to this section must practice under the indirect supervision, as defined in s. 466.003, of a dentist licensed pursuant to chapter 466.~~

Section 8. Section 456.0241, Florida Statutes, is created to read:

456.0241 Temporary certificate for active duty military health care practitioners.—

(1) As used in this section, the term:

(a) "Military health care practitioner" means a person who is practicing as a health care practitioner as that term is defined in s. 456.001, is licensed under part III of chapter 401, or is licensed under part IV of chapter 468 and is serving on active duty in the United States Armed Forces, the United States Reserve Forces, or the National Guard, or is serving on active duty in the United States Armed Forces and in the United States Public Health Service.

(b) "Military platform" means a military training agreement with a nonmilitary health care provider which is designed to develop and support medical, surgical, or other health care treatment opportunities in the nonmilitary health care provider setting so that military health care practitioners may develop and maintain technical proficiency to meet the present and

future health care needs of the United States Armed Forces. Such agreements may include training affiliation agreements and external resource sharing agreements.

(2) The department may issue a temporary certificate to an active duty military health care practitioner to practice in a regulated profession, as that term is defined in s. 456.001, if the applicant meets all of the following requirements:

(a) Submits proof that he or she will be practicing pursuant to a military platform.

(b) Submits a complete application and a nonrefundable application fee.

(c) Holds a valid and unencumbered license to practice as a health care professional in another state, the District of Columbia, or a possession or territory of the United States or is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required for practice in the United States Armed Services and who provides evidence of military training and experience substantially equivalent to the requirements for licensure in this state to practice in that profession.

(d) Attests that he or she is not, at the time of application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying for a temporary certificate.

(e) Has been determined to be competent in the profession for which he or she is applying for a temporary certificate.

(f) Submits a set of fingerprints for a background

screening pursuant to s. 456.0135, if required by the profession for which he or she is applying for a temporary certificate.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

(3) A temporary certificate issued under this section expires 6 months after issuance, but may be renewed upon proof of continuing orders in this state and evidence that the military health care practitioner continues to be a military platform participant.

(4) A military health care practitioner applying under this section is exempt from the requirements of ss. 456.039-456.046. All other provisions of chapter 456 apply.

(5) An applicant for a temporary certificate under this section shall be deemed ineligible if the applicant:

(a) Has been convicted of or pled nolo contendere to, regardless of adjudication, a felony or misdemeanor related to the practice of a health care profession.

(b) Has had a health care provider license revoked or suspended in another state, the District of Columbia, or a possession or territory of the United States.

(c) Has failed to obtain a passing score on the Florida licensure examination required to practice the profession for which the applicant is seeking a temporary certificate.

(d) Is under investigation in another jurisdiction for an act that would constitute a violation of the applicable licensing chapter or chapter 456 until such time as the investigation is complete and the military health care

practitioner is found innocent of all charges.

(6) The department shall establish by rule application and renewal fees not to exceed $50 for a temporary certificate issued under this section.

(7) Application must be made on a form prepared and furnished by the department.

(8) The department shall adopt rules necessary to implement the provisions of this section.

Section 9. Present subsections (3) through (11) of section 456.025, Florida Statutes, are redesignated as subsections (2) through (10), respectively, and present subsections (2), (3), (7), and (8) of that section are amended, to read:

456.025 Fees; receipts; disposition.—

~~(2) The chairpersons of the boards and councils listed in s. 20.43(3)(g) shall meet annually at division headquarters to review the long-range policy plan required by s. 456.005 and current and proposed fee schedules. The chairpersons shall make recommendations for any necessary statutory changes relating to fees and fee caps. Such recommendations shall be compiled by the Department of Health and be included in the annual report to the Legislature required by s. 456.026 as well as be included in the long-range policy plan required by s. 456.005.~~

(2)~~(3)~~ Each board within the jurisdiction of the department, or the department when there is no board, shall determine by rule the amount of license fees for the profession it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws relating to the regulation of professions by the department and the board. Each board, or the department if there is no board, shall ensure

that license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the agency, with advice of the applicable board. ~~If sufficient action is not taken by a board within 1 year after notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature.~~ Further, it is the intent of the Legislature ~~legislative intent~~ that a ~~no~~ regulated profession not operate with a negative cash balance. If, however, a profession's fees are at their statutory fee cap and the requirements of subsections (1) and (4) are met, a profession may operate at a deficit until the deficit is eliminated ~~The department may provide by rule for advancing sufficient funds to any profession operating with a negative cash balance. The advancement may be for a period not to exceed 2 consecutive years, and the regulated profession must pay interest. Interest shall be calculated at the current rate earned on investments of a trust fund used by the department to implement this chapter. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance~~.

(6) ~~(7)~~ Each board, or the department if there is no board, shall establish~~,~~ by rule~~,~~ a fee of up to ~~not to exceed~~ $250 for anyone seeking ~~approval~~ to provide continuing education courses or programs and ~~shall establish by rule~~ a biennial renewal fee of up to ~~not to exceed~~ $250 for the renewal of an approval to

provide ~~providership of~~ such courses. The fees collected ~~from continuing education providers~~ shall be used for the purposes of reviewing course provider applications, monitoring the integrity of the courses provided, covering legal expenses incurred as a result of not granting or renewing an approval ~~a providership~~, and developing and maintaining an electronic continuing education tracking system pursuant to s. 456.0361. ~~The department shall implement an electronic continuing education tracking system for each new biennial renewal cycle for which electronic renewals are implemented after the effective date of this act and shall integrate such system into the licensure and renewal system.~~ All approved continuing education providers shall provide information on course attendance to the department necessary to implement the electronic tracking system. The department shall, by rule, specify the form and procedures by which the information is to be submitted.

(7) ~~(8)~~ All moneys collected by the department from fees or fines or from costs awarded to the agency by a court shall be paid into a trust fund used by the department to implement this chapter. The Legislature shall appropriate funds from this trust fund sufficient to administer ~~carry out~~ this chapter and the provisions of law with respect to professions regulated by the Division of Medical Quality Assurance within the department and the boards. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The department shall maintain separate accounts in the trust fund used by the department to implement this chapter for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to

the account of each regulated profession. For the purpose of this subsection, direct charge expenses include, but are not limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. If a profession has established renewal fees that meet the requirements of subsection (1), has fees that are at the statutory fee cap, and has been operating in a deficit for 2 or more fiscal years, the department may waive allocated administrative and operational indirect costs until such time as the profession has a positive cash balance. The costs related to administration and operations include, but are not limited to, the costs of the director's office and the costs of system support, communications, central records, and other such administrative functions. Such waived costs shall be allocated to the other professions that must meet the requirements of this section, and cash in the unlicensed activity account under s. 456.065 of the profession whose costs have been waived shall be transferred to the operating account in an amount not to exceed the amount of the deficit. The regulation by the department of professions, as defined in this chapter, must ~~shall~~ be financed solely from revenue collected by the department ~~it~~ from fees and other charges and deposited in the Medical Quality Assurance Trust Fund, and all such revenue is hereby appropriated to the department, which~~. However, it is legislative intent that each profession shall operate within its anticipated fees. The department may not expend funds from the account of a profession~~

~~to pay for the expenses incurred on behalf of another profession, except that the Board of Nursing must pay for any costs incurred in the regulation of certified nursing assistants. The department~~ shall maintain adequate records to support its allocation of agency expenses. The department shall provide any board with reasonable access to these records upon request. On or before October 1 of each year, the department shall provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession. The board shall use these reports and the department's adopted long-range plan to determine the amount of license fees. ~~A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared under s. 456.026.~~

Section 10. Section 456.0361, Florida Statutes, is created to read:

456.0361 Compliance with continuing education requirements.—

(1) The department shall establish an electronic continuing education tracking system to monitor licensee compliance with applicable continuing education requirements and to determine whether a licensee is in full compliance with the requirements at the time of his or her application for license renewal. The tracking system shall be integrated into the department's licensure and renewal process.

(2) The department may not renew a license until the licensee complies with all applicable continuing education requirements. This subsection does not prohibit the department or the boards from imposing additional penalties under the

applicable professional practice act or applicable rules for failure to comply with continuing education requirements.

(3) The department may adopt rules to implement this section.

Section 11. Subsection (20) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(20) The board with department approval, or the department when there is no board, may temporarily or permanently appoint a person or an entity as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of a ~~the~~ practitioner, or the abandonment of medical records by a practitioner. Such ~~The~~ custodian ~~appointed~~ shall comply with ~~all provisions of~~ this section. The department may contract with a third party to provide these services under the confidentiality and disclosure requirements of this section~~, including the release of patient records~~.

Section 12. Subsection (2) of section 456.0635, Florida Statutes, is amended to read:

456.0635 Health care fraud; disqualification for license, certificate, or registration.—

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or

nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state


857014

576-02645-16

Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

~~This subsection does not apply to candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, which was recognized by a board or, if there is no board, recognized by the department, and who applied for licensure after July 1, 2012.~~

Section 13. Subsection (3) of section 457.107, Florida Statutes, is amended to read:

457.107 Renewal of licenses; continuing education.—

(3) The board shall ~~by rule~~ prescribe by rule continuing education requirements of up to~~, not to exceed~~ 30 hours biennially~~,~~ as a condition for renewal of a license. All education programs that contribute to the advancement, extension, or enhancement of professional skills and knowledge related to the practice of acupuncture, whether conducted by a nonprofit or profitmaking entity, are eligible for approval. The continuing professional education requirements must be in acupuncture or oriental medicine subjects, including, but not limited to, anatomy, biological sciences, adjunctive therapies, sanitation and sterilization, emergency protocols, and diseases. The board may ~~shall have the authority to~~ set a fee of up to~~,~~


857014

576-02645-16

~~not to exceed~~ $100~~,~~ for each continuing education provider. The licensee shall retain in his or her records the certificates of completion of continuing professional education requirements ~~to prove compliance with this subsection. The board may request such documentation without cause from applicants who are selected at random~~. All national and state acupuncture and oriental medicine organizations and acupuncture and oriental medicine schools are approved to provide continuing professional education in accordance with this subsection.

Section 14. Paragraph (e) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to paragraph (f). A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that he or she is a physician assistant and~~.~~ ~~Furthermore, the physician assistant must~~ inform the patient that the patient has the right to see the physician before a ~~prior to any~~ prescription is ~~being~~ prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of his or her intent to delegate, on a department-approved form, before delegating such authority and ~~notify the department~~ of


857014

576-02645-16

any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervising physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must complete ~~file with the department a signed affidavit that he or she has completed~~ a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal ~~application~~.

4. The department may issue a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the ~~foregoing~~ requirements of this paragraph. The physician assistant is ~~shall~~ not ~~be~~ required to independently register pursuant to s. 465.0276.

5. The prescription must be written in a form that complies with chapter 499 and, in addition to the supervisory physician's name, address, and telephone number, must contain~~, in addition to the supervisory physician's name, address, and telephone number,~~ the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465 and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The inclusion ~~appearance~~ of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.


857014

576-02645-16

Section 15. Paragraph (e) of subsection (4) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to s. 458.347. A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that she or he is a physician assistant and~~. Furthermore, the physician assistant must~~ inform the patient that the patient has the right to see the physician before a ~~prior to any~~ prescription is ~~being~~ prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of her or his intent to delegate, on a department-approved form, before delegating such authority and ~~notify the department~~ of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervisory physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must complete ~~file with the department a signed affidavit that she or he has completed~~ a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal ~~application~~.

4. The department may issue a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the ~~foregoing~~ requirements of this paragraph. The physician assistant is ~~shall~~ not ~~be~~ required to independently register pursuant to s. 465.0276.

5. The prescription must be written in a form that complies with chapter 499 and, in addition to the supervisory physician's name, address, and telephone number, must contain~~, in addition to the supervisory physician's name, address, and telephone number,~~ the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465, and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The inclusion ~~appearance~~ of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

Section 16. Subsection (7) is added to section 460.402, Florida Statutes, to read:

460.402 Exceptions.—The provisions of this chapter shall not apply to:

(7) A chiropractic physician who holds an active license in another jurisdiction and is performing chiropractic procedures or demonstrating equipment or supplies for educational purposes at a board-approved continuing education program.

Section 17. Subsection (3) of section 463.007, Florida

Statutes, is amended to read:

463.007 Renewal of license; continuing education.—

(3) As a condition of license renewal, a licensee must ~~Unless otherwise provided by law, the board shall require licensees to periodically~~ demonstrate his or her ~~their~~ professional competence~~, as a condition of renewal of a license,~~ by completing up to 30 hours of continuing education during the 2-year period preceding license renewal. For certified optometrists, the 30-hour continuing education requirement includes ~~shall include~~ 6 or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases during the 2-year period preceding application for license renewal.

Section 18. Subsection (7) of section 464.203, Florida Statutes, is amended to read:

464.203 Certified nursing assistants; certification requirement.—

(7) A certified nursing assistant shall complete 24 ~~12~~ hours of inservice training during each biennium ~~calendar year~~. The certified nursing assistant shall maintain ~~be responsible for maintaining~~ documentation demonstrating compliance with these provisions. ~~The Council on Certified Nursing Assistants, in accordance with s. 464.2085(2)(b), shall propose rules to implement this subsection.~~

Section 19. Section 464.2085, Florida Statutes, is repealed.

Section 20. Paragraph (b) of subsection (1) and subsection (3) of section 465.0276, Florida Statutes, are amended to read:


857014

576-02645-16

465.0276 Dispensing practitioner.—

(1)

(b) A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III as provided in s. 893.03. This paragraph does not apply to:

1. The dispensing of complimentary packages of medicinal drugs which are labeled as a drug sample or complimentary drug as defined in s. 499.028 to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect, as provided in subsection (4) ~~subsection (5)~~.

2. The dispensing of controlled substances in the health care system of the Department of Corrections.

3. The dispensing of a controlled substance listed in Schedule II or Schedule III in connection with the performance of a surgical procedure. The amount dispensed pursuant to the subparagraph may not exceed a 14-day supply. This exception does not allow for the dispensing of a controlled substance listed in Schedule II or Schedule III more than 14 days after the performance of the surgical procedure. For purposes of this subparagraph, the term "surgical procedure" means any procedure in any setting which involves, or reasonably should involve:

a. Perioperative medication and sedation that allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal or tactile stimulation and makes intra- and postoperative monitoring necessary; or

b. The use of general anesthesia or major conduction


857014

576-02645-16

anesthesia and preoperative sedation.

4. The dispensing of a controlled substance listed in Schedule II or Schedule III pursuant to an approved clinical trial. For purposes of this subparagraph, the term "approved clinical trial" means a clinical research study or clinical investigation that, in whole or in part, is state or federally funded or is conducted under an investigational new drug application that is reviewed by the United States Food and Drug Administration.

5. The dispensing of methadone in a facility licensed under s. 397.427 where medication-assisted treatment for opiate addiction is provided.

6. The dispensing of a controlled substance listed in Schedule II or Schedule III to a patient of a facility licensed under part IV of chapter 400.

~~(3) The department shall inspect any facility where a practitioner dispenses medicinal drugs pursuant to subsection (2) in the same manner and with the same frequency as it inspects pharmacies for the purpose of determining whether the practitioner is in compliance with all statutes and rules applicable to her or his dispensing practice.~~

Section 21. Subsection (3) of section 466.0135, Florida Statutes, is amended to read:

466.0135 Continuing education; dentists.—

(3) A ~~In applying for license renewal, the~~ dentist shall complete ~~submit a sworn affidavit, on a form acceptable to the department, attesting that she or he has completed~~ the required continuing education as provided ~~required~~ in this section ~~in accordance with the guidelines and provisions of this section~~

~~and listing the date, location, sponsor, subject matter, and hours of completed continuing education courses~~. An ~~The~~ applicant shall retain in her or his records any ~~such~~ receipts, vouchers, or certificates ~~as may be~~ necessary to document completion of such ~~the~~ continuing education courses ~~listed in accordance with this subsection~~. ~~With cause, the board may request such documentation by the applicant, and the board may request such documentation from applicants selected at random without cause.~~

Section 22. Section 466.014, Florida Statutes, is amended to read:

466.014 Continuing education; dental hygienists.—In addition to the other requirements for relicensure for dental hygienists set out in this chapter ~~act~~, the board shall require each licensed dental hygienist to complete at least ~~not less than~~ 24 hours but not ~~or~~ more than 36 hours of continuing professional education in dental subjects, biennially, in programs prescribed or approved by the board or in equivalent programs of continuing education. Programs of continuing education approved by the board are ~~shall be~~ programs of learning which, in the opinion of the board, contribute directly to the dental education of the dental hygienist. The board shall adopt rules and guidelines to administer and enforce ~~the provisions of~~ this section. ~~In applying for license renewal, the dental hygienist shall submit a sworn affidavit, on a form acceptable to the department, attesting that she or he has completed the continuing education required in this section in accordance with the guidelines and provisions of this section and listing the date, location, sponsor, subject matter, and~~

~~hours of completed continuing education courses.~~ An ~~The~~ applicant shall retain in her or his records any ~~such~~ receipts, vouchers, or certificates ~~as may be~~ necessary to document completion of such ~~the~~ continuing education courses ~~listed in accordance with this section~~. ~~With cause, the board may request such documentation by the applicant, and the board may request such documentation from applicants selected at random without cause.~~ Compliance with the continuing education requirements is ~~shall be~~ mandatory for issuance of the renewal certificate. The board may ~~shall have the authority to~~ excuse licensees, as a group or as individuals, from all or part of the continuing educational requirements if~~, or any part thereof, in the event~~ an unusual circumstance, emergency, or hardship has prevented compliance with this section.

Section 23. Subsection (5) of section 466.032, Florida Statutes, is amended to read:

466.032 Registration.—

(5) A ~~The~~ dental laboratory owner or at least one employee of any dental laboratory renewing registration on or after July 1, 2010, shall complete 18 hours of continuing education biennially. Programs of continuing education must ~~shall~~ be programs of learning that contribute directly to the education of the dental technician and may include, but are not limited to, attendance at lectures, study clubs, college courses, or scientific sessions of conventions and research.

(a) The aim of continuing education for dental technicians is to improve dental health care delivery to the public as such is impacted through the design, manufacture, and use of artificial human oral prosthetics and related restorative

appliances.

(b) Continuing education courses shall address one or more of the following areas of professional development, including, but not limited to:

1. Laboratory and technological subjects, including, but not limited to, laboratory techniques and procedures, materials, and equipment; and

2. Subjects pertinent to oral health, infection control, and safety.

(c) Programs that meet ~~meeting~~ the general requirements of continuing education may be developed and offered to dental technicians by the Florida Dental Laboratory Association and the Florida Dental Association. Other organizations, schools, or agencies may also be approved to develop and offer continuing education in accordance with specific criteria established by the department.

~~(d) Any dental laboratory renewing a registration on or after July 1, 2010, shall submit a sworn affidavit, on a form approved by the department, attesting that either the dental laboratory owner or one dental technician employed by the registered dental laboratory has completed the continuing education required in this subsection in accordance with the guidelines and provisions of this subsection and listing the date, location, sponsor, subject matter, and hours of completed continuing education courses. The dental laboratory shall retain in its records such receipts, vouchers, or certificates as may be necessary to document completion of the continuing education courses listed in accordance with this subsection. With cause, the department may request that the documentation be provided by~~

~~the applicant. The department may also request the documentation from applicants selected at random without cause.~~

(d) ~~(e)~~ 1. This subsection does not apply to a dental laboratory that is physically located within a dental practice operated by a dentist licensed under this chapter.

2. A dental laboratory in another state or country which provides service to a dentist licensed under this chapter is not required to register with the state and may continue to provide services to such dentist with a proper prescription. However, a dental laboratory in another state or country~~, however,~~ may voluntarily comply with this subsection.

Section 24. Section 468.1201, Florida Statutes, is repealed.

Section 25. Paragraph (a) of subsection (3), subsections (4) and (5), paragraphs (a) and (e) of subsection (6), and subsection (7) of section 483.901, Florida Statutes, are amended, and paragraph (k) is added to subsection (6) of that section, to read:

483.901 Medical physicists; definitions; licensure.—

(3) DEFINITIONS.—As used in this section, the term:

~~(a) "Council" means the Advisory Council of Medical Physicists in the Department of Health.~~

~~(4) COUNCIL.—The Advisory Council of Medical Physicists is created in the Department of Health to advise the department in regulating the practice of medical physics in this state.~~

~~(a) The council shall be composed of nine members appointed by the State Surgeon General as follows:~~

~~1. A licensed medical physicist who specializes in diagnostic radiological physics.~~

~~2. A licensed medical physicist who specializes in therapeutic radiological physics.~~

~~3. A licensed medical physicist who specializes in medical nuclear radiological physics.~~

~~4. A physician who is board certified by the American Board of Radiology or its equivalent.~~

~~5. A physician who is board certified by the American Osteopathic Board of Radiology or its equivalent.~~

~~6. A chiropractic physician who practices radiology.~~

~~7. Three consumer members who are not, and have never been, licensed as a medical physicist or licensed in any closely related profession.~~

~~(b) The State Surgeon General shall appoint the medical physicist members of the council from a list of candidates who are licensed to practice medical physics.~~

~~(c) The State Surgeon General shall appoint the physician members of the council from a list of candidates who are licensed to practice medicine in this state and are board certified in diagnostic radiology, therapeutic radiology, or radiation oncology.~~

~~(d) The State Surgeon General shall appoint the public members of the council.~~

~~(e) As the term of each member expires, the State Surgeon General shall appoint the successor for a term of 4 years. A member shall serve until the member's successor is appointed, unless physically unable to do so.~~

~~(f) An individual is ineligible to serve more than two full consecutive 4-year terms.~~

~~(g) If a vacancy on the council occurs, the State Surgeon~~

~~General shall appoint a member to serve for a 4-year term.~~

~~(h) A council member must be a United States citizen and must have been a resident of this state for 2 consecutive years immediately before being appointed.~~

~~1. A member of the council who is a medical physicist must have practiced for at least 6 years before being appointed or be board certified for the specialty in which the member practices.~~

~~2. A member of the council who is a physician must be licensed to practice medicine in this state and must have practiced diagnostic radiology or radiation oncology in this state for at least 2 years before being appointed.~~

~~3. The public members of the council must not have a financial interest in any endeavor related to the practice of medical physics.~~

~~(i) A council member may be removed from the council if the member:~~

~~1. Did not have the required qualifications at the time of appointment;~~

~~2. Does not maintain the required qualifications while serving on the council; or~~

~~3. Fails to attend the regularly scheduled council meetings in a calendar year as required by s. 456.011.~~

~~(j) Members of the council may not receive compensation for their services; however, they are entitled to reimbursement, from funds deposited in the Medical Quality Assurance Trust Fund, for necessary travel expenses as specified in s. 112.061 for each day they engage in the business of the council.~~

~~(k) At the first regularly scheduled meeting of each calendar year, the council shall elect a presiding officer and~~

~~an assistant presiding officer from among its members. The council shall meet at least once each year and at other times in accordance with department requirements.~~

~~(l) The department shall provide administrative support to the council for all licensing activities.~~

~~(m) The council may conduct its meetings electronically.~~

~~(5) POWERS OF COUNCIL.—The council shall:~~

~~(a) Recommend rules to administer this section.~~

~~(b) Recommend practice standards for the practice of medical physics which are consistent with the Guidelines for Ethical Practice for Medical Physicists prepared by the American Association of Physicists in Medicine and disciplinary guidelines adopted under s. 456.079.~~

~~(c) Develop and recommend continuing education requirements for licensed medical physicists.~~

(4)~~(6)~~ LICENSE REQUIRED.—An individual may not engage in the practice of medical physics, including the specialties of diagnostic radiological physics, therapeutic radiological physics, medical nuclear radiological physics, or medical health physics, without a license issued by the department for the appropriate specialty.

(a) The department shall adopt rules to administer this section which specify license application and renewal fees, continuing education requirements, and standards for practicing medical physics. ~~The council shall recommend to the department continuing education requirements that shall be a condition of license renewal.~~ The department shall require a minimum of 24 hours per biennium of continuing education offered by an organization ~~recommended by the council and~~ approved by the

department. The department~~, upon recommendation of the council,~~ may adopt rules to specify continuing education requirements for persons who hold a license in more than one specialty.

(e) Upon ~~On~~ receipt of an application and fee as specified in this section, the department may issue a license to practice medical physics in this state ~~on or after October 1, 1997,~~ to a person who is board certified in the medical physics specialty in which the applicant applies to practice by the American Board of Radiology for diagnostic radiological physics, therapeutic radiological physics, or medical nuclear radiological physics; by the American Board of Medical Physics for diagnostic radiological physics, therapeutic radiological physics, or medical nuclear radiological physics; or by the American Board of Health Physics or an equivalent certifying body approved by the department.

(k) Upon proof of a completed residency program and receipt of the fee set forth by rule, the department may issue a temporary license for no more than 1 year. The department may adopt by rule requirements for temporary licensure and renewal of temporary licenses.

(5)~~(7)~~ FEES.—The fee for the initial license application shall be $500 and is nonrefundable. The fee for license renewal may not be more than $500. These fees may cover only the costs incurred by the department ~~and the council~~ to administer this section. By July 1 each year, the department shall determine ~~advise the council~~ if the fees are insufficient to administer this section.

Section 26. Subsection (2) of section 484.047, Florida Statutes, is amended to read:

484.047 Renewal of license.—

(2) In addition to the other requirements for renewal provided in this section and by the board, the department shall renew a license upon receipt of the renewal application and~~,~~ the renewal fee~~, and a written statement affirming compliance with all other requirements set forth in this section and by the board~~. A licensee must maintain, if applicable, a certificate from a manufacturer or independent testing agent certifying that the testing room meets the requirements of s. 484.0501(6) and, if applicable, a certificate from a manufacturer or independent testing agent stating that all audiometric testing equipment used by the licensee has been calibrated acoustically to American National Standards Institute standards on an annual basis ~~acoustically to American National Standards Institute standard specifications~~. Possession of any applicable certificate is ~~the certificates shall be~~ a prerequisite to renewal.

Section 27. Subsections (1) and (4) of section 486.109, Florida Statutes, are amended to read:

486.109 Continuing education.—

(1) The board shall require licensees to ~~periodically~~ demonstrate their professional competence as a condition of renewal of a license by completing 24 hours of continuing education biennially.

(4) Each licensee shall maintain ~~be responsible for maintaining~~ sufficient records ~~in a format as determined by rule which shall be subject to a random audit by the department~~ to demonstrate ~~assure~~ compliance with this section.

Section 28. Paragraph (a) of subsection (15) of section

499.028, Florida Statutes, is amended to read:

499.028 Drug samples or complimentary drugs; starter packs; permits to distribute.—

(15) A person may not possess a prescription drug sample unless:

(a) The drug sample was prescribed to her or him as evidenced by the label required in s. 465.0276(4) ~~s. 465.0276(5)~~.

Section 29. Paragraph (g) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton

			disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
1322			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
1323			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1324			
	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
1325			
	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
1326			
	456.065(2)	3rd	Practicing a health care profession without a license.
1327			
	456.065(2)	2nd	Practicing a health care

			profession without a license which results in serious bodily injury.
1328			
	458.327(1)	3rd	Practicing medicine without a license.
1329			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
1330			
	460.411(1)	3rd	Practicing chiropractic medicine without a license.
1331			
	461.012(1)	3rd	Practicing podiatric medicine without a license.
1332			
	462.17	3rd	Practicing naturopathy without a license.
1333			
	463.015(1)	3rd	Practicing optometry without a license.
1334			
	464.016(1)	3rd	Practicing nursing without a license.
1335			
	465.015(2)	3rd	Practicing pharmacy

		without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)~~483.901(9)~~	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of chapter 494

		in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).

782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators

		facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons

		violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but

		younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized

		emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.

812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.

1398	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
1399	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
1400	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1401	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
1402	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.

1403	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
1404	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
1405	838.015	2nd	Bribery.
1406	838.016	2nd	Unlawful compensation or reward for official behavior.
1407	838.021(3)(a)	2nd	Unlawful harm to a public servant.
1408	838.22	2nd	Bid tampering.
1409	843.0855(2)	3rd	Impersonation of a public officer or employee.
1410	843.0855(3)	3rd	Unlawful simulation of legal process.
	843.0855(4)	3rd	Intimidation of a public officer or employee.

847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b),

		(1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure

		to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

Section 30. This act shall take effect July 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 Appropriations

BILL:	CS/SB 918
INTRODUCER:	Health Policy Committee and Senator Richter
SUBJECT:	Licensure of Health Care Professionals
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 918 authorizes the Department of Health (DOH) to waive fees and issue health care licenses to active duty U.S. military personnel who are within six months of an honorable discharge and to issue temporary licenses to active duty military spouses under certain circumstances. The bill also eliminates the requirement that a military spouse who has been issued a temporary dental license may practice only under the supervision of a Florida dentist.

The bill also updates various provisions regulating health care professions to reflect current operations and to improve operational efficiencies, including:

- Conforming Florida Statute to reflect implementation of the integrated electronic continuing education (CE) tracking system regarding the licensure and renewal process;
- Authorizing the DOH to contract with a third party to serve as the custodian of medical records in the event of a practitioner's death, incapacitation, or abandonment of records;
- Modifying procedures for handling professions that have been operating with cash deficits and which are at the statutory fee cap;
- Deleting the requirement for pre-licensure courses relating to HIV/AIDS and medical errors for certain professions;
- Eliminating a loophole pertaining to the licensure and license renewal of certain felons, persons convicted of Medicaid fraud, or other excluded individuals;

- Eliminating the requirement for annual inspections of dispensing practitioners' facilities;[1]
- Repealing the Council on Certified Nursing Assistants and the Advisory Council of Medical Physicists; and
- Providing for a one-year temporary license for medical physicists.

The bill is expected to result in cost savings of approximately $630,000 in recurring funds within the DOH Medical Quality Assurance Trust Fund.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Health Care Practitioner Licensure

The Department of Health (DOH) is responsible for the regulation of health practitioners and health care facilities in Florida for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA), working in conjunction with 22 boards and six councils, licenses and regulates seven types of health care facilities and more than 200 license types in over 40 health care professions.[2] Any person desiring to be a licensed health care professional in Florida must apply to the DOH in writing.[3] Most health care professions are regulated by a board or council in conjunction with the DOH and all professions have different requirements for initial licensure and licensure renewal.[4]

Initial Licensure Requirements

Military Health Care Practitioners

Section 456.024, F.S., provides that any member of the U.S. Armed Forces who has served as a health care practitioner on active duty in the military, reserves, National Guard, or in the United States Public Health Service, is also eligible for licensure in Florida. The DOH is required to waive fees and issue these individuals a license if they submit a completed application and proof of the following:

- An honorable discharge within six months before or after the date of submission of the application;[5]
- An active, unencumbered license issued by another state, the District of Columbia, or a U.S. possession or territory, with no disciplinary action taken in the five years preceding the date of submission of the application;
- An affidavit that he or she is not, at the time of submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States

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[1] Under s. 465.0276, F.S., a person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under ch. 465, F.S., to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with s. 465.0276, F.S.

[2] Florida Dep't of Health, Medical Quality Assurance, *Annual Report and Long Range Plan, 2014-2015,* p.6, *available at:* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1415.pdf

[3] Section 456.013, F.S.

[4] *See* chs. 401, 456-468, 478, 480, 483, 484, 486, 490, and 491, F.S.

[5] A form DD-214 or an NGB-22 is required as proof of honorable discharge. Department of Health, *Veterans,* http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html (last visited Dec. 15, 2015).

Department of Defense for reasons related to the practice of the profession for which he or she is applying;
- Documentation of actively practicing his or her profession for the three years preceding the date of submission of the application; and
- Fingerprints for a background screening, if required for the profession for which he or she is applying.[6]

Florida offers an expedited licensure process to facilitate veterans seeking licensure in a health care profession in Florida through its Veterans Application for Licensure Online Response system (VALOR).[7] In order to qualify, a veteran must apply for the license within six months before, or six months after, he or she is honorably discharged from the Armed Forces. Under the VALOR system, there is no application fee, licensure fee, or unlicensed activity fee.[8]

A board, or the DOH if there is no board, may also issue a temporary health care professional license to the spouse of an active duty member of the Armed Forces upon submission of an application form and fees. The applicant must hold a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States and may not be the subject of any disciplinary proceeding in any jurisdiction relating to the practice of a regulated health care profession in Florida. A spouse who is issued a temporary professional license to practice as a dentist under this authority may practice only under the supervision of a Florida dentist.

HIV and AIDS Course Requirements

Section 381.0034(3), F.S. and s. 468.1201, F.S., require prospective licensees for midwifery, radiology technology, laboratory technicians, medical physicists, speech-language pathology, and audiology, as a condition of initial licensure, to complete an approved course on HIV and AIDS. An applicant who has not completed the required HIV and AIDS course at the time of initial licensure will, upon submission of an affidavit showing good cause, be allowed six months to complete this requirement.

Medical Errors Course Requirements

Section 456.013(7), F.S., requires that every practitioner regulated by DOH complete a DOH approved two-hour course relating to the prevention of medical errors as part of the licensure and renewal process. The two-hour course counts toward the total number of continuing education (CE) credits required for the profession.

[6] *Id.* The Military Veteran Fee Waiver Request Form, also must be submitted with the application for licensure to receive waiver of fees and is available on the DOH website.
[7] Florida Dep't of Health, *Veterans*, http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html, (last visited Dec. 15, 2015).
[8] *Id.*

Licensure Renewal Requirements

CE Tracking

Under s. 456.025(7), F.S., the DOH is required to utilize an electronic continuing education (CE) tracking system for each new biennial renewal cycle, and all approved CE providers must submit information on course attendance to the DOH for this system. The initial CE tracking system was not linked to the DOH license renewal system, so in order for a practitioner to renew his or her license, he or she certified that the required CEs had been completed. The DOH is currently deploying an integrated CE tracking system for all professions. Several practice acts still reference the submission of sworn affidavits, audits for compliance, and other methods for proof of completion of CE requirements.[9]

Felons, Medicaid Fraud, and Excluded Individuals

Section 456.0635(2), F.S., provides that a board or the DOH, if there is no board, must refuse to admit a candidate to any examination, and refuse to issue a license, certificate, or registration, to any applicant if the candidate, applicant, or principal, officer, agent, managing employee, or affiliated person of an applicant:

- Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies;
- Has been terminated for cause from any Medicaid program; or
- Is listed on the U.S. Department of Health and Human Services' List of Excluded Individuals and Entities.

Section 456.0635(2), F.S., provides a tiered timeframe for these individuals to apply for a license, certificate, or registration, depending on the degree and age of the violation. There is a general exception for candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, and who applied for licensure after July 1, 2012.

According to the DOH, recently, when the department refused to renew licenses based on the provisions of s. 456.0635(3), F.S., the licensees have immediately reapplied under the exception in s. 456.0635(2), F.S., and were granted a license. By taking advantage of the exception, licensees who were convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies; or were terminated for cause from the Florida Medicaid or any other state's Medicaid program; or are currently listed on the United States Department of Health and Human Services' List of Excluded Individuals and Entities, have been able to regain a license to practice. When the next renewal cycle ends, those licensees will once again be denied renewal based on s. 456.0635(3), F.S., but the applicants can again reapply for licensure under the exception in s. 456.0635(2), F.S.[10]

[9] *See* Florida Department of Health, *Senate Bill 918 Analysis*, p. 6, (Nov. 20, 2015) (on file with the Senate Committee on Health Policy).
[10] *Id* at p. 7.

Continuing Education Reporting for Renewal

Section 463.007, F.S., authorizes the DOH to periodically require an optometrist to demonstrate his or her professional competence, as a condition of licensure renewal, by completing up to 30 CE hours in the two years preceding renewal. For certified optometrists, the 30 hours of CE must include six or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases.

Section 464.203, F.S., requires a certified nursing assistant (CNA) to complete 12 CE hours of in-service training every year.

Sections 457.107(3), 458.347(4)(e)3., 466.0135(3), 466.014, 466.032(5), 484.047(2), and 486.109(4), F.S., require acupuncturists, physician assistants, dentists, dental hygienists, dental laboratories, hearing aid specialists, and physical therapists to provide an affidavit or written statement attesting to the completion of the required CEs for his or her biennial renewal period. The DOH is authorized to request that a licensee, with or without cause, produce documentation of his or her completed CEs reported for the biennial renewal period.

Licensure Regulation Costs

Section 456.025, F.S., sets forth the legislative intent that all costs of regulating health care professions must be borne solely by licensees and license applicants and that no profession is to operate with a negative cash flow balance. Fees are set by the board, or the DOH where there is no board, and are required to be reasonable while not creating a barrier to licensure. Fees are to be based on potential earnings of licensees, must be similar to similarly licensed professions, and must not be more than 10 percent higher than the actual cost of regulating the profession the previous biennium. All funds collected by the DOH from fees, fines, or costs awarded to the department by a court must be paid into the Medical Quality Assurance Trust Fund. The DOH may not expend funds from one profession to pay for the expenses incurred by another profession, except that the Board of Nursing is responsible for the costs incurred in regulating certified nursing assistants.

The DOH may adopt rules for advancing funds to professions operating with a negative cash balance. However, it may not advance funds to one profession for more than two consecutive years and must charge interest at the current rate earned on trust funds used by the DOH to implement ch. 456, F.S. Interest earned by the trust fund must be allocated to the professions in accordance with its respective investment. Each board or the DOH, by rule, may also assess a one-time fee to each active and inactive licensee in an amount necessary to eliminate a cash deficit in the profession or, if there is no deficit, to maintain the financial integrity of the profession. Not more than one such assessment may be made in any four-year period.

The DOH has provided the following recap of professions that have faced negative cash balances.[11] The boards have imposed four one-time assessments in the past 10 years as follows:

- Electrolysis: FY 2005-2006, $1,306;
- Nursing Home Administrators: FY 2005-2006, $200;

[11] *Id*. at p. 5.

- Dentistry: FY 2007-2008, $250; and
- Midwifery: FY 2008-2009, $250.

Three professions operate in a chronic deficit. Each is at its statutory fee cap and, according to the DOH, the midwifery and electrology professions do not have a large enough licensure base to generate adequate revenue to cover expenditures. These professions and the deficit amount under which they operate are:

	Cash Balance	Renewal Fee	Statutory Fee Cap	Total Licensees
Dentistry	$ (2,144,333)	$ 300	$ 300	14,285
Electrology	$ (638,545)	$ 100	$ 100	1,591
Midwifery	$ (900,115)	$ 500	$ 500	206

If the boards or the DOH were to impose a one-time assessment, the amounts needed to eliminate the deficits and result in solvency though Fiscal Year 2019-2020 would be:
- Dentistry: $450 per active/inactive licensee;
- Electrology: $900 per active/inactive licensee; and
- Midwifery: $5,500 per active/inactive licensee.

Section 456.025, F.S., allows the boards, or the DOH if there is no board, to collect up to $250 from CE providers seeking approval or renewal of individual courses. The fees are required to be used to review the proposed courses and for implementation of the electronic CE tracking system which is integrated with the licensure and renewal systems.

Section 456.025, F.S., also requires the chairpersons of the boards and councils to meet annually to review the long-range policy plan and current and proposed fee schedules. The chairpersons are required to make recommendations for any necessary statutory changes relating to fees and fee caps which must be compiled by the DOH and included in its annual report to the Legislature.

Ownership and Control of Patient Records

Section 456.057(20), F.S., provides that the board or the DOH may appoint a medical records custodian for patient records in the event of the death or incapacitation of a practitioner or when patient records have been abandoned. The custodian is required to comply with all requirements of s. 456.057, F.S. The DOH reports that 10 or more times per year, most frequently upon the death or incarceration of a practitioner, patient records are abandoned and patients cannot access their own records. The DOH attempts to secure the abandoned records but does not have the manpower or storage capacity to assume control.[12]

Dispensing Practitioner Facility Inspections

Section 465.0276(3), F.S., requires the DOH to inspect any facility where a dispensing practitioner dispenses medicinal drugs in the same manner, and with the same frequency, as it inspects pharmacies to determine whether the practitioner is in compliance with all applicable statutes and rules. The DOH currently inspects pharmacies upon opening, annually, when they

[12] *Supra note 9.*

change locations, and when changing ownership.[13] The DOH inspects a dispensing practitioner's practice location(s) prior to the registration being added to the practitioner's license and annually thereafter.[14]

Dispensing practitioners can dispense any prescription medication in their office, except Schedule II and III controlled substances. This prohibition against dispensing controlled substances does not apply to:

- The dispensing of complimentary packages of medicinal drugs which are labeled as a drug sample or complimentary drug to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect;
- The dispensing of controlled substances in the health care system of the Department of Corrections;
- In connection with a surgical procedure, and then no more than a 14-day supply;
- In an approved clinical trial;
- In a medication-assisted opiate treatment facility licensed under s. 397.427, F.S.; or
- In a hospice facility licensed under part IV of chapter 400.[15]

During the last two fiscal years, the DOH conducted 15,062 dispensing practitioner inspections with a passing rate of 99 percent.[16]

Council on Certified Nursing Assistants

Section 464.2085, F.S., creates the council on certified nursing assistants (CNA) within the DOH, under the board of nursing. The council consists of two members who are registered nurses, one member who is a licensed practical nurse, and two CNAs who are appointed by the State Surgeon General. The duties of the council are to make recommendations to the DOH and the board on:

- Policies and procedures for the certification of nursing assistants;
- Rules regulating the education, training, and certification process for nursing assistants; and
- Concerns and problems of certified nursing assistants to improve safety in the practice.

Historically, the council met every two months in conjunction with board of nursing meetings at an estimated cost of $40,000 per year. The council's last face-to-face meeting was in 2013. Beginning in 2014, the council met by telephone conference call only on an as-needed basis. Both the board of nursing and the council have supported abolishment of the council since 2014.[17]

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[13] Florida Dep't of Health, *Inspection Programs – Who We Inspect* http://www.floridahealth.gov/licensing-and-regulation/enforcement/inspection-program/index.html, (last visited Dec. 23, 2015).
[14] *Id*.
[15] *See* s. 465.0276(1)(b), F.S.
[16] *Supra note 9*, at p.8. The restrictions on dispensing controlled substances listed in Schedule II or Schedule III was enacted in 2011. *See*, ch. 2011-141, s. 15, Laws of Florida.
[17] *Supra note 9*, at p.8.

Advisory Council of Medical Physicists

The Advisory Council of Medical Physicists (advisory council) was created in 1997 in s. 483.901(3), F.S., to advise the DOH in regulating the practice of medical physics. The nine-member advisory council is charged with recommending rules to administer the regulation of the practice of medical physics, recommending practice standards, and developing and recommending CE requirements for licensed medical physicists.

According to the DOH, the advisory council fulfilled its statutory role and last met in December 1998. The State Surgeon General appointed new members in 2015 and the advisory council will meet for the first time in 17 years at an estimated cost of $3,535 per meeting. The DOH advises that an Advisory Council on Radiation Protection includes medical physicists as council members, and that group may be used for guidance on matters of practice and public safety pertaining to the practice of medical physics.[18]

III. Effect of Proposed Changes:

This bill updates various sections of law relating to the regulation of health care practitioners.

Initial Licensure Requirements

Military Health Care Practitioners [19]

The bill amends s. 456.024, F.S., to authorize the Department of Health (DOH) to waive fees and issue health care licenses to active duty U.S. military personnel who apply either six months before, or six months after, an honorable discharge, in professions that do not require licensure in other states,[20] if the applicant can provide evidence of training or experience equivalent to that required in Florida and proof of a passing score on a regional or national standards organization exam, if one is required in Florida.

The DOH may also issue temporary licenses to active duty military spouses, in professions that do not require licensure in other states,[21] if the applicant can provide evidence of training or experience equivalent to that required in Florida and proof of a passing score on a regional or national standards organization exam, if one is required in Florida. The applicant must pay the required application fee.

The bill also eliminates the requirement that a military spouse who has been issued a temporary dental license may practice only under the supervision of a Florida dentist.

[18] *Supra note 9*, at p. 9.
[19] See section 3 of the bill.
[20] Professions not licensed in all states: Respiratory therapists (and assistants), Clinical Laboratory Personnel, Medical Physicists, Opticians, Athletics trainers, Electrologists, Nursing home administrators, Midwives, Orthotists (and assistants), Prosthetists (and assistants), Pedorthotists (and assistants), Orthotic fitters (and assistants), Certified chiropractic physician assistants, Pharmacy Technicians.
[21] *Id.*

Temporary Licensure for Medical Physicists

The bill amends s. 483.901, F.S., to allow the DOH to issue a temporary license for no more than one year upon proof that the physicist has completed a residency program and payment of a fee set forth by rule. The DOH may adopt by rule requirements for temporary licensure and renewal of temporary licenses.

HIV and AIDS Course Requirement - Deleted[22]

The bill amends s. 381.0034, F.S., and repeals s. 468.1201, F.S., to delete the requirement that applicants under part IV of ch. 468, F.S., (radiological personnel), medical physicists under ch. 483, F.S., speech and language pathology practitioners, and audiology practitioners, must complete courses in HIV and AIDS before their license may be initially issued. According to the DOH, this will accelerate the initial licensure process and reduce costs to licensees.[23]

Medical Errors Course Requirement - Deleted [24]

The bill amends s. 456.013(7), F.S., to delete the requirement that health care practitioners take two hours of continuing education (CE) in medical errors before a license may be issued but keeps that requirement for biennial renewal. The bill clarifies that the two course hours count toward the total required CE hours for renewal and are not in addition to the required hours.

Licensure Renewal Requirements

CE Tracking[25]

The bill moves the requirement that DOH must establish an electronic CE tracking system which integrates tracking licensee CEs with the DOH licensure and renewal process from s. 456.025, F.S., to a newly created s. 456.0361, F.S. The bill prohibits the DOH from renewing licenses unless the licensee's CE requirements are complete, authorizes the imposition of additional penalties under the applicable practice act for the failure to comply with CE requirements, and authorizes the DOH to adopt rules to implement this section. This codifies in statute DOH's new CE tracking system and allows for uniformity in handling CEs across the various professions.

Accordingly, the bill amends ss. 457.107(3), 458.347(4)(e)3, 466.0135(3), 466.014, 466.032(5), 484.047(2), and 486.109(4), F.S., to simplify and conform the license renewal process for acupuncturists, physician assistants, dentists, dental hygienists, dental laboratories, hearing aid specialists, and physical therapists by eliminating the requirement of an affidavit or written statement attesting to the completion of the required CEs for the biennial renewal period, and by eliminating the DOH's authority to request a licensee, with or without cause, to produce documentation of his or her completed CEs for the biennial renewal period.[26]

Similarly, the bill amends s. 463.007, F.S., to clarify and conform the CE requirements of an optometrist as a condition of license renewal and amends s. 464.203, F.S., to require CNAs to

[22] See sections 1 and 18 of the bill.
[23] *Supra note 9* at pp. 9 and 12.
[24] See section 2 of the bill.
[25] See sections 4 and 5 of the bill.
[26] See sections 8, 9, 14, 15, 16, 19 and 20 of the bill.

complete 24 CE hours of in-service training every biennium, rather than requiring hours annually. This change matches the two-year renewal cycle.[27]

Felons, Medicaid Fraud, and Excluded Individuals[28]

The bill amends s. 456.0635(2), F.S., to delete the exception to the requirement that a board or the DOH must deny the initial licensure of candidates or applicants who were convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain specified felonies primarily relating to health care fraud; have been terminated for cause from a Medicaid program; or who are listed on the U.S. Department of Health and Human Services' List of Excluded Individuals and Entities. The exception currently applies to candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, and who applied for licensure after July 1, 2012. Under the bill, these individuals are unable to re-apply unless their sentence, and any probation, is scheduled to end within the time frame set out in s. 256.0635(2), F.S. Similar grounds exist for denial of a license renewal under s. 456.0635(3), F.S.

Licensure Regulation Costs[29]

The bill amends s. 456.025, F.S., to include a method to address professions which operate in a chronic deficit and which have reached their statutory fee cap. The bill:

- Deletes the requirement for the DOH to increase license fees if the cap has not been reached;
- Deletes the requirement to include recommendations for increases to fee caps in the annual report;
- Deletes rule authority to authorize advances to the profession's account with interest;
- Deletes the prohibition on using funds from one profession for operating another profession;
- Allows the DOH to waive the deficit profession's allocated indirect administrative and operational costs until the profession has a positive cash balance; and
- Allows cash in the unlicensed activity account of the profession whose indirect costs have been waived to be transferred to the operating account up to the amount of the deficit.

According to the DOH, as of June 30, 2014, three of 34 professions regulated under ch. 456, F.S. were in a chronic cash flow deficit and at their statutory fee cap. These three professions are dentistry, electrolysis, and midwifery. The total amount of the deficit was $3,682,993.[30]

The bill deletes the requirement that the chairpersons of the boards and councils meet annually to review the long-range policy plan and current and proposed fee schedules and recommend statutory changes relating to fees and fee caps for compilation by the DOH for inclusion in its annual report to the Legislature.

[27] See sections 10 and 11 of the bill.
[28] See section 7 of the bill.
[29] See section 4 of the bill.
[30] *Supra note 9* at p.10.

Council on Certified Nursing Assistants (CNA)[31]

The bill repeals s. 464.2085, F.S., which created the Council on Certified Nursing Assistants within the DOH under the Board of Nursing. Under the bill, the Board of Nursing will assume responsibility for all matters relating to CNAs.[32]

Advisory Council of Medical Physicists[33]

The bill repeals the advisory council in s. 483.901(3), F.S.

Ownership and Control of Patient Records[34]

The bill amends s. 456.057(20), F.S., to require DOH approval of all board-appointed medical records custodians for the patient medical records of a practitioner who has died, become incapacitated, or abandoned his or her records. The bill further authorizes the DOH to contract with a third party to function as the medical records custodian in these instances and designates the vendor the "records owner" under the same disclosure and confidentiality requirements imposed on licensees.

Dispensing Practitioner Facility Inspections[35]

The bill amends s.465.0276, F.S., to eliminate any required DOH inspection of the facilities of dispensing practitioners. Dispensing practitioners will still be required to register with their appropriate boards[36] but there will no longer be any statutory mandate for the DOH to inspect those facilities within specified timeframes. The DOH may inspect dispensing practitioner locations at such times as it determines necessary as a random, unannounced inspection or during the course of an investigation.[37] The DOH indicates that due to the restrictions on dispensing controlled substances in Schedules II or III, the frequency and manner in which inspections are conducted may no longer be necessary.[38]

Technical Revisions and Effective Date

The bill makes technical and conforming changes and reenacts s. 921.022, F.S.

The bill is effective July 1, 2016.

[31] See section 12 of the bill.
[32] *Supra note 9* at p.11.
[33] See section 18 of the bill.
[34] See section 6 of bill.
[35] See section 13 of the bill.
[36] Section 465.0276(2)(a), F.S.
[37] *See* s. 456.069, F.S.
[38] See Florida Dep't of Health, *Senate Bill 918 Agency Analysis*, pp. 11-12, (Nov. 20, 2015) (on file with the Senate Committee on Health Policy).

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:

Sections 8, 9, 11, 14, 15, 16, 17, 19, and 20 of CS/SB 918 will reduce the costs associated with initial applications for licensure, and renewals, as practitioners will not incur the costs of taking additional specific courses, or for obtaining notarized affidavits before initial licensure or renewal. Section 7 of the bill will prevent practitioners who are prohibited from renewing their licenses by s. 456.0635(3), F.S., from becoming licensed pursuant to s.456.0635(2), F.S.

C. Government Sector Impact:

Section 6 of the bill may require the DOH to incur costs related to maintaining the security and distribution of medical records for practitioners who have left practice. The DOH estimates a recurring coast of approximately $4,020 for which current spending authority is reported to be adequate to absorb.

Section 12 of the bill eliminates the CNA Council, which will result in a cost savings to the DOH of approximately $40,000 per fiscal year due to the elimination of costs associated with face-to-face meetings.

Section 13 of the bill eliminates the DOH's costs associated with the annual routine inspection of dispensing practitioners' facilities. The DOH reports that based on Fiscal Year 2014-2015 data, the total cost to complete these mandatory inspections was $597,707.

Section 19 of the bill eliminates the Advisory Council of Medical Physicists which will result in a cost avoidance for reactivating the advisory council.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 13 of the bill eliminates the DOH's routine inspection of dispensing practitioners' facilities. Although speculative, this lack of routine oversight could result in a public health and safety risk to patients due to issues relating to cleanliness, improper storage and labeling of medications, use of counterfeit medication, etc. However, dispensing practitioners may experience less disruption in routine practice due to fewer inspections.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0034, 456.013, 456.024, 456.025, 456.0361, 456.057, 456.0635, 457.107, 458.347, 463.007, 464.203, 465.0276, 466.0135, 466.014, 466.032, 483.901, 484.047, 486.109, 499.028, and 921.0022.

This bill repeals the following sections of the Florida Statutes: 464.2085 and 468.1201.

IX. Additional Information:

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

CS by Health Policy on January 11, 2016:
The committee substitute recognizes a passing score for examinations approved by a regional, in addition to a national, standards organization for both the military and spousal exceptions from licensure in another state and provides a technical clarification pertaining to the description of the spouse's practice in health care.

The committee substitute also deletes sections pertaining to the Impaired Practitioner program.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Richter

588-02036-16 2016918c1

A bill to be entitled

An act relating to licensure of health care professionals; amending s. 381.0034, F.S.; deleting the requirement that applicants making initial application for certain licensure complete certain courses; amending s. 456.013, F.S.; revising course requirements for renewing a certain license; amending s. 456.024, F.S.; providing for the issuance of a license to practice under certain conditions to a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required to practice in the military; providing for the issuance of a temporary professional license under certain conditions to the spouse of an active duty member of the Armed Forces of the United States who is a healthcare practitioner in a profession for which licensure in a state or jurisdiction may not be required; deleting the requirement that an applicant who is issued a temporary professional license to practice as a dentist must practice under the indirect supervision of a licensed dentist; amending s. 456.025, F.S.; deleting the requirement for an annual meeting of chairpersons of Division of Medical Quality Assurance boards and professions; deleting the requirement that certain recommendations be included in a report to the Legislature; deleting a requirement that the Department of Health set license fees and recommend fee cap increases in certain circumstances; providing that a profession may operate at a deficit for a certain time period; deleting a provision authorizing the department to advance funds under certain circumstances; deleting a requirement that the

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department implement an electronic continuing education tracking system; authorizing the department to waive specified costs under certain circumstances; revising legislative intent; deleting a prohibition against the expenditure of funds by the department from the account of a profession to pay for the expenses of another profession; deleting a requirement that the department include certain information in an annual report to the Legislature; creating s. 456.0361, F.S.; requiring the department to establish an electronic continuing education tracking system; prohibiting the department from renewing a license unless the licensee has complied with all continuing education requirements; authorizing the department to adopt rules; amending s. 456.057, F.S.; revising a provision for a person or an entity appointed by a board to be approved by the department; authorizing the department to contract with a third party to provide record custodian services; amending s. 456.0635, F.S.; deleting a provision on applicability relating to the issuance of licenses; amending s. 457.107, F.S.; deleting a provision authorizing the Board of Acupuncture to request certain documentation from applicants; amending s. 458.347, F.S.; deleting a requirement that a physician assistant file a signed affidavit with the department; amending s. 463.007, F.S.; making technical changes; amending s. 464.203, F.S.; revising inservice training requirements for certified nursing assistants; deleting a rulemaking

requirement; repealing s. 464.2085, F.S., relating to the Council on Certified Nursing Assistants; amending s. 465.0276, F.S.; deleting a requirement that the department inspect certain facilities; amending s. 466.0135, F.S.; deleting a requirement that a dentist file a signed affidavit with the department; deleting a provision authorizing the Board of Dentistry to request certain documentation from applicants; amending s. 466.014, F.S.; deleting a requirement that a dental hygienist file a signed affidavit with the department; deleting a provision authorizing the board to request certain documentation from applicants; amending s. 466.032, F.S.; deleting a requirement that a dental laboratory file a signed affidavit with the department; deleting a provision authorizing the department to request certain documentation from applicants; repealing s. 468.1201, F.S., relating to a requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome; amending s. 483.901, F.S.; deleting provisions relating to the Advisory Council of Medical Physicists in the department; authorizing the department to issue temporary licenses in certain circumstances; authorizing the department to adopt rules; amending s. 484.047, F.S.; deleting a requirement for a written statement from an applicant in certain circumstances; amending s. 486.109, F.S.; deleting a provision authorizing the department to conduct a random audit for certain information; amending ss. 499.028 and

921.0022, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (3) of section 381.0034, Florida Statutes, is amended to read:

381.0034 Requirement for instruction on HIV and AIDS.—

(3) The department shall require, as a condition of granting a license under chapter 467 or part III of chapter 483 ~~the chapters specified in subsection (1)~~, that an applicant making initial application for licensure complete an educational course acceptable to the department on human immunodeficiency virus and acquired immune deficiency syndrome. Upon submission of an affidavit showing good cause, an applicant who has not taken a course at the time of licensure must ~~shall, upon an affidavit showing good cause,~~ be allowed 6 months to complete this requirement.

Section 2. Subsection (7) of section 456.013, Florida Statutes, is amended to read:

456.013 Department; general licensing provisions.—

(7) The boards, or the department when there is no board, shall require the completion of a 2-hour course relating to prevention of medical errors as part of the biennial ~~licensure and~~ renewal process. The 2-hour course counts toward ~~shall count towards~~ the total number of continuing education hours required for the profession. The course must ~~shall~~ be approved by the board or department, as appropriate, and must ~~shall~~ include a study of root-cause analysis, error reduction and prevention,

and patient safety. In addition, the course approved by the Board of Medicine and the Board of Osteopathic Medicine must ~~shall~~ include information relating to the five most misdiagnosed conditions during the previous biennium, as determined by the board. If the course is being offered by a facility licensed pursuant to chapter 395 for its employees, the board may approve up to 1 hour of the 2-hour course to be specifically related to error reduction and prevention methods used in that facility.

Section 3. Paragraph (a) of subsection (3) and paragraphs (a) and (j) of subsection (4) of section 456.024, Florida Statutes, are amended to read:

456.024 Members of Armed Forces in good standing with administrative boards or the department; spouses; licensure.—

(3) A person who serves or has served as a health care practitioner in the United States Armed Forces, United States Reserve Forces, or the National Guard or a person who serves or has served on active duty with the United States Armed Forces as a health care practitioner in the United States Public Health Service is eligible for licensure in this state. The department shall develop an application form, and each board, or the department if there is no board, shall waive the application fee, licensure fee, and unlicensed activity fee for such applicants. For purposes of this subsection, "health care practitioner" means a health care practitioner as defined in s. 456.001 and a person licensed under part III of chapter 401 or part IV of chapter 468.

(a) The board, or department if there is no board, shall issue a license to practice in this state to a person who:

1. Submits a complete application.

2. Receives an honorable discharge within 6 months before, or will receive an honorable discharge within 6 months after, the date of submission of the application.

3. Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the United States and who has not had disciplinary action taken against him or her in the 5 years preceding the date of submission of the application, or who is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required to practice in the United States Armed Services, who provides evidence of military training or experience substantially equivalent to the requirements for licensure in this state in that profession, and who obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state.

4. Attests that he or she is not, at the time of submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

5. Actively practiced the profession for which he or she is applying for the 3 years preceding the date of submission of the application.

6. Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the

applicant under this subsection using the National Practitioner Data Bank.

(4)(a) The board, or the department if there is no board, may issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States who submits to the department:

1. A completed application upon a form prepared and furnished by the department in accordance with the board's rules;

2. The required application fee;

3. Proof that the applicant is married to a member of the Armed Forces of the United States who is on active duty;

4. Proof that the applicant holds a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States, and is not the subject of any disciplinary proceeding in any jurisdiction in which the applicant holds a license to practice a profession regulated by this chapter; or proof that the applicant is a practitioner of health care in a profession for which licensure in another state or jurisdiction is not required, has training or experience substantially equivalent to the requirements for licensure in this state in that profession, and has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state; and

5. Proof that the applicant's spouse is assigned to a duty station in this state pursuant to the member's official active duty military orders.~~; and~~

~~6. Proof that the applicant would otherwise be entitled to~~

~~full licensure under the appropriate practice act, and is eligible to take the respective licensure examination as required in Florida.~~

~~(j) An applicant who is issued a temporary professional license to practice as a dentist pursuant to this section must practice under the indirect supervision, as defined in s. 466.003, of a dentist licensed pursuant to chapter 466.~~

Section 4. Present subsections (3) through (11) of section 456.025, Florida Statutes, are redesignated as subsections (2) through (10), respectively, and present subsections (2), (3), (7), and (8) of that section are amended, to read:

456.025 Fees; receipts; disposition.—

~~(2) The chairpersons of the boards and councils listed in s. 20.43(3)(g) shall meet annually at division headquarters to review the long-range policy plan required by s. 456.005 and current and proposed fee schedules. The chairpersons shall make recommendations for any necessary statutory changes relating to fees and fee caps. Such recommendations shall be compiled by the Department of Health and be included in the annual report to the Legislature required by s. 456.026 as well as be included in the long-range policy plan required by s. 456.005.~~

(2)~~(3)~~ Each board within the jurisdiction of the department, or the department when there is no board, shall determine by rule the amount of license fees for the profession it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws relating to the regulation of professions by the department and the board. Each board, or the department if there is no board, shall ensure that license fees are adequate to cover all anticipated costs

and to maintain a reasonable cash balance, as determined by rule of the agency, with advice of the applicable board. ~~If sufficient action is not taken by a board within 1 year after notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature.~~ Further, it is the intent of the Legislature ~~legislative intent~~ that a ~~no~~ regulated profession not operate with a negative cash balance. If, however, a profession's fees are at their statutory fee cap and the requirements of subsections (1) and (4) are met, a profession may operate at a deficit until the deficit is eliminated ~~The department may provide by rule for advancing sufficient funds to any profession operating with a negative cash balance. The advancement may be for a period not to exceed 2 consecutive years, and the regulated profession must pay interest. Interest shall be calculated at the current rate earned on investments of a trust fund used by the department to implement this chapter. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance~~.

(6) ~~(7)~~ Each board, or the department if there is no board, shall establish~~,~~ by rule~~,~~ a fee of up to ~~not to exceed~~ $250 for anyone seeking ~~approval~~ to provide continuing education courses or programs and ~~shall establish by rule~~ a biennial renewal fee of up to ~~not to exceed~~ $250 for the renewal of an approval to provide ~~providership of~~ such courses. The fees collected ~~from~~

~~continuing education providers~~ shall be used for the purposes of reviewing course provider applications, monitoring the integrity of the courses provided, covering legal expenses incurred as a result of not granting or renewing an approval ~~a providership~~, and developing and maintaining an electronic continuing education tracking system pursuant to s. 456.0361. ~~The department shall implement an electronic continuing education tracking system for each new biennial renewal cycle for which electronic renewals are implemented after the effective date of this act and shall integrate such system into the licensure and renewal system.~~ All approved continuing education providers shall provide information on course attendance to the department necessary to implement the electronic tracking system. The department shall, by rule, specify the form and procedures by which the information is to be submitted.

(7) ~~(8)~~ All moneys collected by the department from fees or fines or from costs awarded to the agency by a court shall be paid into a trust fund used by the department to implement this chapter. The Legislature shall appropriate funds from this trust fund sufficient to administer ~~carry out~~ this chapter and the provisions of law with respect to professions regulated by the Division of Medical Quality Assurance within the department and the boards. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The department shall maintain separate accounts in the trust fund used by the department to implement this chapter for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of

this subsection, direct charge expenses include, but are not limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. If a profession has established renewal fees that meet the requirements of subsection (1), has fees that are at the statutory fee cap, and has been operating in a deficit for 2 or more fiscal years, the department may waive allocated administrative and operational indirect costs until such time as the profession has a positive cash balance. The costs related to administration and operations include, but are not limited to, the costs of the director's office and the costs of system support, communications, central records, and other such administrative functions. Such waived costs shall be allocated to the other professions that must meet the requirements of this section, and cash in the unlicensed activity account under s. 456.065 of the profession whose costs have been waived shall be transferred to the operating account in an amount not to exceed the amount of the deficit. The regulation by the department of professions, as defined in this chapter, must ~~shall~~ be financed solely from revenue collected by the department ~~it~~ from fees and other charges and deposited in the Medical Quality Assurance Trust Fund, and all such revenue is hereby appropriated to the department, which~~. However, it is legislative intent that each profession shall operate within its anticipated fees. The department may not expend funds from the account of a profession to pay for the expenses incurred on behalf of another~~

~~profession, except that the Board of Nursing must pay for any costs incurred in the regulation of certified nursing assistants. The department~~ shall maintain adequate records to support its allocation of agency expenses. The department shall provide any board with reasonable access to these records upon request. On or before October 1 of each year, the department shall provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession. The board shall use these reports and the department's adopted long-range plan to determine the amount of license fees. ~~A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared under s. 456.026.~~

Section 5. Section 456.0361, Florida Statutes, is created to read:

456.0361 Compliance with continuing education requirements.—

(1) The department shall establish an electronic continuing education tracking system to monitor licensee compliance with applicable continuing education requirements and to determine whether a licensee is in full compliance with the requirements at the time of his or her application for license renewal. The tracking system shall be integrated into the department's licensure and renewal process.

(2) The department may not renew a license until the licensee complies with all applicable continuing education requirements. This subsection does not prohibit the department or the boards from imposing additional penalties under the applicable professional practice act or applicable rules for

failure to comply with continuing education requirements.

(3) The department may adopt rules to implement this section.

Section 6. Subsection (20) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(20) The board with department approval, or department when there is no board, may temporarily or permanently appoint a person or an entity as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of a ~~the~~ practitioner, or the abandonment of medical records by a practitioner. Such ~~The~~ custodian ~~appointed~~ shall comply with ~~all provisions of~~ this section. The department may contract with a third party to provide these services under the confidentiality and disclosure requirements of this section~~, including the release of patient records~~.

Section 7. Subsection (2) of section 456.0635, Florida Statutes, is amended to read:

456.0635 Health care fraud; disqualification for license, certificate, or registration.—

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under

chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in

good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

~~This subsection does not apply to candidates or applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2009, which was recognized by a board or, if there is no board, recognized by the department, and who applied for licensure after July 1, 2012.~~

Section 8. Subsection (3) of section 457.107, Florida Statutes, is amended to read:

457.107 Renewal of licenses; continuing education.—

(3) The board shall ~~by rule~~ prescribe by rule continuing education requirements of up to~~, not to exceed~~ 30 hours biennially~~,~~ as a condition for renewal of a license. All education programs that contribute to the advancement, extension, or enhancement of professional skills and knowledge related to the practice of acupuncture, whether conducted by a nonprofit or profitmaking entity, are eligible for approval. The continuing professional education requirements must be in acupuncture or oriental medicine subjects, including, but not limited to, anatomy, biological sciences, adjunctive therapies, sanitation and sterilization, emergency protocols, and diseases. The board may ~~shall have the authority to~~ set a fee of up to~~, not to exceed~~ $100~~,~~ for each continuing education provider. The

licensee shall retain in his or her records the certificates of completion of continuing professional education requirements ~~to prove compliance with this subsection. The board may request such documentation without cause from applicants who are selected at random~~. All national and state acupuncture and oriental medicine organizations and acupuncture and oriental medicine schools are approved to provide continuing professional education in accordance with this subsection.

Section 9. Paragraph (e) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to paragraph (f). A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that he or she is a physician assistant and~~. Furthermore, the physician assistant must~~ inform the patient that the patient has the right to see the physician before a ~~prior to any~~ prescription is ~~being~~ prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of his or her intent to delegate, on a department-approved form, before delegating such authority and ~~notify the department~~ of any change in prescriptive privileges of the physician

assistant. Authority to dispense may be delegated only by a supervising physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must complete ~~file with the department a signed affidavit that he or she has completed~~ a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal ~~application~~.

4. The department may issue a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the ~~foregoing~~ requirements of this paragraph. The physician assistant is ~~shall~~ not ~~be~~ required to independently register pursuant to s. 465.0276.

5. The prescription must be written in a form that complies with chapter 499 and, in addition to the supervisory physician's name, address, and telephone number, must contain~~, in addition to the supervisory physician's name, address, and telephone number,~~ the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465 and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The inclusion ~~appearance~~ of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

Section 10. Subsection (3) of section 463.007, Florida

Statutes, is amended to read:

463.007 Renewal of license; continuing education.—

(3) As a condition of license renewal, a licensee must ~~Unless otherwise provided by law, the board shall require licensees to periodically~~ demonstrate his or her ~~their~~ professional competence~~, as a condition of renewal of a license,~~ by completing up to 30 hours of continuing education during the 2-year period preceding license renewal. For certified optometrists, the 30-hour continuing education requirement includes ~~shall include~~ 6 or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases during the 2-year period preceding application for license renewal.

Section 11. Subsection (7) of section 464.203, Florida Statutes, is amended to read:

464.203 Certified nursing assistants; certification requirement.—

(7) A certified nursing assistant shall complete 24 ~~12~~ hours of inservice training during each biennium ~~calendar year~~. The certified nursing assistant shall maintain ~~be responsible for maintaining~~ documentation demonstrating compliance with these provisions. ~~The Council on Certified Nursing Assistants, in accordance with s. 464.2085(2)(b), shall propose rules to implement this subsection.~~

Section 12. Section 464.2085, Florida Statutes, is repealed.

Section 13. Paragraph (b) of subsection (1) and subsection (3) of section 465.0276, Florida Statutes, are amended to read:

465.0276 Dispensing practitioner.—

(1)

(b) A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III as provided in s. 893.03. This paragraph does not apply to:

1. The dispensing of complimentary packages of medicinal drugs which are labeled as a drug sample or complimentary drug as defined in s. 499.028 to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect, as provided in subsection (4) ~~subsection (5)~~.

2. The dispensing of controlled substances in the health care system of the Department of Corrections.

3. The dispensing of a controlled substance listed in Schedule II or Schedule III in connection with the performance of a surgical procedure. The amount dispensed pursuant to the subparagraph may not exceed a 14-day supply. This exception does not allow for the dispensing of a controlled substance listed in Schedule II or Schedule III more than 14 days after the performance of the surgical procedure. For purposes of this subparagraph, the term "surgical procedure" means any procedure in any setting which involves, or reasonably should involve:

a. Perioperative medication and sedation that allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal or tactile stimulation and makes intra- and postoperative monitoring necessary; or

b. The use of general anesthesia or major conduction

anesthesia and preoperative sedation.

4. The dispensing of a controlled substance listed in Schedule II or Schedule III pursuant to an approved clinical trial. For purposes of this subparagraph, the term "approved clinical trial" means a clinical research study or clinical investigation that, in whole or in part, is state or federally funded or is conducted under an investigational new drug application that is reviewed by the United States Food and Drug Administration.

5. The dispensing of methadone in a facility licensed under s. 397.427 where medication-assisted treatment for opiate addiction is provided.

6. The dispensing of a controlled substance listed in Schedule II or Schedule III to a patient of a facility licensed under part IV of chapter 400.

~~(3) The department shall inspect any facility where a practitioner dispenses medicinal drugs pursuant to subsection (2) in the same manner and with the same frequency as it inspects pharmacies for the purpose of determining whether the practitioner is in compliance with all statutes and rules applicable to her or his dispensing practice.~~

Section 14. Subsection (3) of section 466.0135, Florida Statutes, is amended to read:

466.0135 Continuing education; dentists.—

(3) A ~~In applying for license renewal, the~~ dentist shall complete ~~submit a sworn affidavit, on a form acceptable to the department, attesting that she or he has completed~~ the required continuing education as provided ~~required~~ in this section ~~in accordance with the guidelines and provisions of this section~~

~~and listing the date, location, sponsor, subject matter, and hours of completed continuing education courses~~. An ~~The~~ applicant shall retain in her or his records any ~~such~~ receipts, vouchers, or certificates ~~as may be~~ necessary to document completion of such ~~the~~ continuing education courses ~~listed in accordance with this subsection~~. ~~With cause, the board may request such documentation by the applicant, and the board may request such documentation from applicants selected at random without cause.~~

Section 15. Section 466.014, Florida Statutes, is amended to read:

466.014 Continuing education; dental hygienists.—In addition to the other requirements for relicensure for dental hygienists set out in this chapter ~~act~~, the board shall require each licensed dental hygienist to complete at least ~~not less than~~ 24 hours but not ~~or~~ more than 36 hours of continuing professional education in dental subjects, biennially, in programs prescribed or approved by the board or in equivalent programs of continuing education. Programs of continuing education approved by the board are ~~shall be~~ programs of learning which, in the opinion of the board, contribute directly to the dental education of the dental hygienist. The board shall adopt rules and guidelines to administer and enforce ~~the provisions of~~ this section. ~~In applying for license renewal, the dental hygienist shall submit a sworn affidavit, on a form acceptable to the department, attesting that she or he has completed the continuing education required in this section in accordance with the guidelines and provisions of this section and listing the date, location, sponsor, subject matter, and~~

~~hours of completed continuing education courses.~~ An ~~The~~ applicant shall retain in her or his records any ~~such~~ receipts, vouchers, or certificates ~~as may be~~ necessary to document completion of such ~~the~~ continuing education courses ~~listed in accordance with this section~~. ~~With cause, the board may request such documentation by the applicant, and the board may request such documentation from applicants selected at random without cause.~~ Compliance with the continuing education requirements is ~~shall be~~ mandatory for issuance of the renewal certificate. The board may ~~shall have the authority to~~ excuse licensees, as a group or as individuals, from all or part of the continuing educational requirements if~~, or any part thereof, in the event~~ an unusual circumstance, emergency, or hardship has prevented compliance with this section.

Section 16. Subsection (5) of section 466.032, Florida Statutes, is amended to read:

466.032 Registration.—

(5) A ~~The~~ dental laboratory owner or at least one employee of any dental laboratory renewing registration on or after July 1, 2010, shall complete 18 hours of continuing education biennially. Programs of continuing education must ~~shall~~ be programs of learning that contribute directly to the education of the dental technician and may include, but are not limited to, attendance at lectures, study clubs, college courses, or scientific sessions of conventions and research.

(a) The aim of continuing education for dental technicians is to improve dental health care delivery to the public as such is impacted through the design, manufacture, and use of artificial human oral prosthetics and related restorative

appliances.

(b) Continuing education courses shall address one or more of the following areas of professional development, including, but not limited to:

1. Laboratory and technological subjects, including, but not limited to, laboratory techniques and procedures, materials, and equipment; and

2. Subjects pertinent to oral health, infection control, and safety.

(c) Programs that meet ~~meeting~~ the general requirements of continuing education may be developed and offered to dental technicians by the Florida Dental Laboratory Association and the Florida Dental Association. Other organizations, schools, or agencies may also be approved to develop and offer continuing education in accordance with specific criteria established by the department.

~~(d) Any dental laboratory renewing a registration on or after July 1, 2010, shall submit a sworn affidavit, on a form approved by the department, attesting that either the dental laboratory owner or one dental technician employed by the registered dental laboratory has completed the continuing education required in this subsection in accordance with the guidelines and provisions of this subsection and listing the date, location, sponsor, subject matter, and hours of completed continuing education courses. The dental laboratory shall retain in its records such receipts, vouchers, or certificates as may be necessary to document completion of the continuing education courses listed in accordance with this subsection. With cause, the department may request that the documentation be provided by~~

~~the applicant. The department may also request the documentation from applicants selected at random without cause.~~

(d) ~~(c)~~ 1. This subsection does not apply to a dental laboratory that is physically located within a dental practice operated by a dentist licensed under this chapter.

2. A dental laboratory in another state or country which provides service to a dentist licensed under this chapter is not required to register with the state and may continue to provide services to such dentist with a proper prescription. However, a dental laboratory in another state or country~~, however,~~ may voluntarily comply with this subsection.

Section 17. Section 468.1201, Florida Statutes, is repealed.

Section 18. Paragraph (a) of subsection (3), subsections (4) and (5), paragraphs (a) and (e) of subsection (6), and subsection (7) of section 483.901, Florida Statutes, are amended, and paragraph (k) is added to subsection (6) of that section, to read:

483.901 Medical physicists; definitions; licensure.—

(3) DEFINITIONS.—As used in this section, the term:

~~(a) "Council" means the Advisory Council of Medical Physicists in the Department of Health.~~

~~(4) COUNCIL.—The Advisory Council of Medical Physicists is created in the Department of Health to advise the department in regulating the practice of medical physics in this state.~~

~~(a) The council shall be composed of nine members appointed by the State Surgeon General as follows:~~

~~1. A licensed medical physicist who specializes in diagnostic radiological physics.~~

~~2. A licensed medical physicist who specializes in therapeutic radiological physics.~~

~~3. A licensed medical physicist who specializes in medical nuclear radiological physics.~~

~~4. A physician who is board certified by the American Board of Radiology or its equivalent.~~

~~5. A physician who is board certified by the American Osteopathic Board of Radiology or its equivalent.~~

~~6. A chiropractic physician who practices radiology.~~

~~7. Three consumer members who are not, and have never been, licensed as a medical physicist or licensed in any closely related profession.~~

~~(b) The State Surgeon General shall appoint the medical physicist members of the council from a list of candidates who are licensed to practice medical physics.~~

~~(c) The State Surgeon General shall appoint the physician members of the council from a list of candidates who are licensed to practice medicine in this state and are board certified in diagnostic radiology, therapeutic radiology, or radiation oncology.~~

~~(d) The State Surgeon General shall appoint the public members of the council.~~

~~(e) As the term of each member expires, the State Surgeon General shall appoint the successor for a term of 4 years. A member shall serve until the member's successor is appointed, unless physically unable to do so.~~

~~(f) An individual is ineligible to serve more than two full consecutive 4-year terms.~~

~~(g) If a vacancy on the council occurs, the State Surgeon~~

~~General shall appoint a member to serve for a 4-year term.~~

~~(h) A council member must be a United States citizen and must have been a resident of this state for 2 consecutive years immediately before being appointed.~~

~~1. A member of the council who is a medical physicist must have practiced for at least 6 years before being appointed or be board certified for the specialty in which the member practices.~~

~~2. A member of the council who is a physician must be licensed to practice medicine in this state and must have practiced diagnostic radiology or radiation oncology in this state for at least 2 years before being appointed.~~

~~3. The public members of the council must not have a financial interest in any endeavor related to the practice of medical physics.~~

~~(i) A council member may be removed from the council if the member:~~

~~1. Did not have the required qualifications at the time of appointment;~~

~~2. Does not maintain the required qualifications while serving on the council; or~~

~~3. Fails to attend the regularly scheduled council meetings in a calendar year as required by s. 456.011.~~

~~(j) Members of the council may not receive compensation for their services; however, they are entitled to reimbursement, from funds deposited in the Medical Quality Assurance Trust Fund, for necessary travel expenses as specified in s. 112.061 for each day they engage in the business of the council.~~

~~(k) At the first regularly scheduled meeting of each calendar year, the council shall elect a presiding officer and~~

~~an assistant presiding officer from among its members. The council shall meet at least once each year and at other times in accordance with department requirements.~~

~~(l) The department shall provide administrative support to the council for all licensing activities.~~

~~(m) The council may conduct its meetings electronically.~~

~~(5) POWERS OF COUNCIL.—The council shall:~~

~~(a) Recommend rules to administer this section.~~

~~(b) Recommend practice standards for the practice of medical physics which are consistent with the Guidelines for Ethical Practice for Medical Physicists prepared by the American Association of Physicists in Medicine and disciplinary guidelines adopted under s. 456.079.~~

~~(c) Develop and recommend continuing education requirements for licensed medical physicists.~~

(4) ~~(6)~~ LICENSE REQUIRED.—An individual may not engage in the practice of medical physics, including the specialties of diagnostic radiological physics, therapeutic radiological physics, medical nuclear radiological physics, or medical health physics, without a license issued by the department for the appropriate specialty.

(a) The department shall adopt rules to administer this section which specify license application and renewal fees, continuing education requirements, and standards for practicing medical physics. ~~The council shall recommend to the department continuing education requirements that shall be a condition of license renewal.~~ The department shall require a minimum of 24 hours per biennium of continuing education offered by an organization ~~recommended by the council and~~ approved by the

department. The department~~, upon recommendation of the council,~~ may adopt rules to specify continuing education requirements for persons who hold a license in more than one specialty.

(e) Upon ~~On~~ receipt of an application and fee as specified in this section, the department may issue a license to practice medical physics in this state ~~on or after October 1, 1997,~~ to a person who is board certified in the medical physics specialty in which the applicant applies to practice by the American Board of Radiology for diagnostic radiological physics, therapeutic radiological physics, or medical nuclear radiological physics; by the American Board of Medical Physics for diagnostic radiological physics, therapeutic radiological physics, or medical nuclear radiological physics; or by the American Board of Health Physics or an equivalent certifying body approved by the department.

(k) Upon proof of a completed residency program and receipt of the fee set forth by rule, the department may issue a temporary license for no more than 1 year. The department may adopt by rule requirements for temporary licensure and renewal of temporary licenses.

(5) ~~(7)~~ FEES.—The fee for the initial license application shall be $500 and is nonrefundable. The fee for license renewal may not be more than $500. These fees may cover only the costs incurred by the department ~~and the council~~ to administer this section. By July 1 each year, the department shall determine ~~advise the council~~ if the fees are insufficient to administer this section.

Section 19. Subsection (2) of section 484.047, Florida Statutes, is amended to read:

484.047 Renewal of license.—

(2) In addition to the other requirements for renewal provided in this section and by the board, the department shall renew a license upon receipt of the renewal application and~~,~~ the renewal fee~~, and a written statement affirming compliance with all other requirements set forth in this section and by the board~~. A licensee must maintain, if applicable, a certificate from a manufacturer or independent testing agent certifying that the testing room meets the requirements of s. 484.0501(6) and, if applicable, a certificate from a manufacturer or independent testing agent stating that all audiometric testing equipment used by the licensee has been calibrated acoustically to American National Standards Institute standards on an annual basis ~~acoustically to American National Standards Institute standard specifications~~. Possession of any applicable certificate is ~~the certificates shall be~~ a prerequisite to renewal.

Section 20. Subsections (1) and (4) of section 486.109, Florida Statutes, are amended to read:

486.109 Continuing education.—

(1) The board shall require licensees to ~~periodically~~ demonstrate their professional competence as a condition of renewal of a license by completing 24 hours of continuing education biennially.

(4) Each licensee shall maintain ~~be responsible for maintaining~~ sufficient records ~~in a format as determined by rule which shall be subject to a random audit by the department~~ to demonstrate ~~assure~~ compliance with this section.

Section 21. Paragraph (a) of subsection (15) of section

499.028, Florida Statutes, is amended to read:

499.028 Drug samples or complimentary drugs; starter packs; permits to distribute.—

(15) A person may not possess a prescription drug sample unless:

(a) The drug sample was prescribed to her or him as evidenced by the label required in s. 465.0276(4) ~~s. 465.0276(5)~~.

Section 22. Paragraph (g) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton

		disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care

		profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy

		without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7) ~~483.901(9)~~	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of chapter 494

		in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).

782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators

		facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons

		violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but

		younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized

		emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.

812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.

817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.

827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.

847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b),

		(1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure

		to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

Section 23. This act shall take effect July 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 Appropriations

BILL:	SB 944
INTRODUCER:	Senators Richter and Gaetz
SUBJECT:	Out-of-state Fee Waivers for Active Duty Service Members
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Favorable**
2.	Smith	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 944 provides for out-of-state fee waivers for active duty members of the United States Armed Forces who reside or are stationed outside of Florida. The bill specifies that tuition and fees charged to such students must not exceed the tuition and fees charged to resident students.

Additionally, the bill requires rulemaking to administer the fee waivers to the active duty members of the United States Armed Forces and reporting to maintain a record of the number and value of all such fee waivers granted.

The impact on institutional fee revenues is insignificant.

The bill takes effect July 1, 2016.

II. Present Situation:

The Florida Legislature has enacted laws to provide members of the Armed Forces access to public postsecondary education in the state.

Tuition and Fees

The term "tuition" is defined as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in this state."[1] An "out-of-state fee" is the additional fee for instruction provided by a public postsecondary educational institution charged to a student who does not qualify for the in-state tuition rate."[2]

[1] Section 1009.01(1), F.S. Additionally, the definition states that "[a] charge for any other purpose shall not be included within this fee." *Id.*

[2] Section 1009.01(2), F.S. Adding that "[a] charge for any other purpose shall not be included within this fee." *Id.*

A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.[3] A "non-resident for tuition purposes" is defined as a "person who does not qualify for the in-state tuition rate,"[4] and pays the out-of-state fee in addition to tuition.

Current law affords in-state tuition benefits to members of the United States military through either fee waivers or resident status for tuition purposes.

In-state Tuition

Fee Waivers

Florida law affords waivers[5] from fees to certain students who meet specified criteria including, but not limited to, certain members of the United States military. For instance, state universities, Florida College System (FCS) institutions, and technical centers must waive tuition for undergraduate college credit programs and career certificate programs, as applicable, for recipients of a Purple Heart or another combat decoration superior in precedence.[6] Additionally, honorably discharged veterans of the United States Armed Forces, the United States Reserved Forces, or the National Guard who meet certain conditions are eligible for out-of-state fee waiver benefits through the Congressman C.W. "Bill" Young Veteran Tuition Waiver Program.[7]

Resident Status for Tuition Purposes

Active duty members of the Armed Services of the United States residing or stationed in Florida, and their spouses and dependent children, and active drilling members of the Florida National Guard are considered Florida residents for tuition purposes[8] and accordingly receive in-state tuition and student financial aid benefits. Such benefits also apply to active duty members of the Armed Services of the United States and their spouses and dependents attending an FCS institution or state university within 50 miles of the military establishment where they are stationed, if such military establishment is within a county contiguous to Florida.[9]

III. Effect of Proposed Changes:

This bill waives the out-of-state fee for active duty members of the United States Armed Forces who reside in or are stationed outside of Florida. In effect, the bill extends in-state tuition benefits, through a fee waiver approach, to the specified United States Armed Forces members. The out-of-state fee waivers may apply to undergraduate and graduate degree programs.

Additionally, similar to the Congressman C.W. "Bill" Young Veteran Tuition Waiver Program requirements, the bill requires:

- Tuition and fees charged to a student who qualifies for the out-of-state fee waiver for the specified active duty members of the United States Armed Forces must not exceed the tuition and fees charged to a resident student.

[3] Section 1009.21(1)(g), F.S.
[4] Section 1009.21(1)(e), F.S.
[5] Section 1009.26, F.S.
[6] Section 1009.26(8), F.S.
[7] Section 1009.26(13), F.S.
[8] Section 1009.21(10)(a), F.S.
[9] Section 1009.21(10)(b), F.S.

- Each state university, Florida College System institution, and technical center to report to the Board of Governors (BOG) and the State Board of Education (SBE), as applicable, the number and value of all fee waivers granted to the active duty members of the United States Armed Forces.
- The BOG and the SBE to adopt regulations and rules, respectively, to administer the out-of-state fee waivers for active duty members of the United States Armed Forces.

This waiver will primarily affect active duty members of the Armed Forces who enroll in distance learning courses while stationed outside of Florida on military establishments farther than 50 miles from an FCS institution or state university, if the military establishment is not in a county contiguous to Florida.

The bill takes effect July 1, 2016.

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 944 provides for out-of-state fee waivers for active duty members of the United States Armed Forces who reside or who are stationed outside of Florida. Students who qualify for this waiver will experience cost savings associated with their programs of study at state universities, Florida College System (FCS) institutions, and technical centers. This waiver applies to both undergraduate and graduate education. At a state university system institution, an average of $465.59 will be saved for each undergraduate credit hour and an average of $599.07 will be saved for each graduate credit hour taken by eligible servicemembers. [10]

[10] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 944 (Jan. 13, 2016), at 2, on file with the Appropriations Subcommittee on Education staff.

C. Government Sector Impact:

State universities, Florida College System institutions, and technical centers will potentially forgo out-of-state fee revenue for the specified students. The Florida Board of Governors estimates the state universities could potentially see a decrease of $248,000 in tuition revenues. [11] According to the Florida Department of Education, FCS institutions and technical centers may see a reduction in out-of-state tuition and fee revenues generated by non-resident students, but the amount is indeterminable at this time. [12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.26 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.

[11] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 944 (Jan. 13, 2016), at 2-3, on file with the Appropriations Subcommittee on Education staff.
[12] Department of Education, 2016 Agency Legislative Bill Analysis for SB 944 (Feb. 10, 2016), at 4, on file with the Appropriations Subcommittee on Education staff.

By Senator Richter

23-00505-16 2016944__

A bill to be entitled

An act relating to out-of-state fee waivers for active duty service members; amending s. 1009.26, F.S.; requiring state universities, Florida College System institutions, and certain centers to waive out-of-state fees for active duty members of the United States Armed Forces residing or stationed outside of this state; prohibiting tuition and fees charged to such students from exceeding a specified amount; requiring an annual report of all out-of-state fee waivers for such individuals; requiring the Board of Governors and the State Board of education to adopt related regulations and rules; providing an effective date.

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

Section 1. Subsection (14) is added to section 1009.26, Florida Statutes, to read:

1009.26 Fee waivers.—

(14)(a) A state university, Florida College System institution, career center operated by a school district under s. 1001.44, or charter technical career center shall waive out-of-state fees for a person who is an active duty member of the Armed Forces of the United States residing or stationed outside of this state.

(b) Tuition and fees charged to a student who qualifies for the out-of-state fee waiver under this subsection may not exceed the tuition and fees charged to a resident student.

23-00505-16 2016944__

(c) Each state university, Florida College System institution, career center operated by a school district under s. 1001.44, and charter technical career center shall report to the Board of Governors and the State Board of Education, respectively, the number and value of all fee waivers granted annually under this subsection.

(d) The Board of Governors and the State Board of Education shall respectively adopt regulations and rules to administer this subsection.

Section 2. This act shall take effect July 1, 2016.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 970
INTRODUCER:	Banking and Insurance Committee and Senator Richter
SUBJECT:	Unclaimed Property
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.	Fournier	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 970 amends the Florida Disposition of Unclaimed Property Act (the act). Unclaimed property consists of any funds or other property, including insurance proceeds, that remain unclaimed by the owner for a certain period of time. The act requires holders of unclaimed property to exercise due diligence to locate owners and pay them the funds. If the owner cannot be located, the holder must report and remit the unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property. The bill makes the following changes to the act:

- Eliminates several exceptions to the general 20-percent fee cap on the compensation that may be paid to a claimant's representative who recovers unclaimed property;
- Requires that the purchase agreement for unclaimed property which compensates the buyer through a flat fee show the fee as a percentage of the property;
- Requires DFS to deny a claim for unclaimed property submitted by a purchaser of the property if the purchase agreement shows that the property was discounted by more than 20 percent;
- Requires that agreements to recover unclaimed property other than an original limited power of attorney be executed by the claimant no earlier than the date the claimant executed the original limited power of attorney;
- Requires a claim for unclaimed property to include certified copies of all court pleadings to establish entitlement to the property which were filed within 180 days before the claim form is signed;

- Repeals a provision giving DFS the exclusive right to notify owners of the existence of unclaimed property valued at more than $250 within the first 45 days after the property is added to the unclaimed property database;
- Requires unclaimed property in a campaign account for public office to escheat to the state;
- Increases from $5,000 to $10,000 the aggregate value of the unclaimed property held by DFS which may be claimed by the beneficiary of the estate of a deceased owner without initiating probate proceedings;
- Authorizes DFS to estimate the value of unclaimed property held by the holder of the property if the holder fails to provide records after being requested to do so; and
- Increases to 30 days from 10 days the time by which a purchaser of unclaimed property must pay the seller, and voids the claim by the purchaser, if proof of payment is not filed with DFS.

The bill does not affect any state or local tax or fee. It provides that unclaimed property in a campaign account will escheat to the state and the proceeds will be deposited in the State School Trust Fund. The Revenue Estimating Conference has not analyzed the bill**.**

The bill has a July 1, 2016 effective date.

II. Present Situation:

Unclaimed Property

According to the Bureau of Unclaimed Property, in Fiscal Year 2014-2015 the bureau processed over 500,000 claims and returned $253 million worth of property to Floridians.[1] Unclaimed property comprises any funds or other property, tangible or intangible, that have remained unclaimed by the owner for more than 5 years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[2]

In 1987, Florida adopted the Uniform Unclaimed Property Act[3] and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the act").[4] The act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the act, the Department of Financial Services, Bureau of Unclaimed Property (DFS) is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the act, and citizens may claim their property at any time and at no cost.

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[1] Email from Elizabeth Boyd, Legislative Affairs Director, Office of the Chief Financial Officer (Feb. 25, 2016) (on file with the Senate Committee on Judiciary).
[2] Sections 717.104 – 717.116, F.S.
[3] UNIFORM LAW COMMISSION, *Unclaimed Property Act (1952)(1981)*, http://www.uniformlaws.org/Act.aspx?title=Unclaimed Property Act (1952)(1981) (last visited Feb. 15, 2016).
[4] Chapter 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act (last visited Feb. 15, 2016).

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the act.[5] Holders of unclaimed property (which typically include banks and insurance companies) of $50 or more are required to use due diligence to locate and notify apparent owners of inactive accounts, at least 60 days but not more than 120 days, prior to filing a report with DFS.[6] If the owners cannot be located, holders must file an annual report with DFS for all property, valued at $50 or more, which is presumed unclaimed for the preceding year.[7] The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address of apparent owners.[8] The holder must deliver all reportable unclaimed property to DFS when it submits its annual report.[9]

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.[10] The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to DFS may file a claim for the property, subject to certain requirements.[11] DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS is to deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.[12]

If the property remains unclaimed, all proceeds from abandoned property are then deposited by DFS into the Unclaimed Property Trust Fund.[13] DFS is allowed to retain up to $15 million to make prompt payment on verified claims and to cover costs incurred by DFS in administering and enforcing the act. All remaining funds received must be deposited into the State School Fund to be used for public education.[14]

Claims for recovery of unclaimed property held by DFS under the act may be filed by or on behalf of any person with an interest in the property.[15] While the act provides the opportunity for anyone to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue the claim by executing a power of attorney agreement. The claimant may also sell the right to the property to certain individuals who are registered with

[5] Section 717.102(1), F.S.
[6] Section 717.117(4), F.S.
[7] Section 717.117, F.S.
[8] For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. Section 717.117(1)(b), F.S.
[9] Section 717.119, F.S.
[10] Section 717.1201, F.S. Like many other states' unclaimed property acts, the act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.
[11] Sections 717.117 and 717.124, F.S.
[12] Section 717.124, F.S.
[13] Section 717.123, F.S.
[14] *Id.*
[15] Section 717.124, F.S.

DFS for this purpose.[16] In either case, the transaction is subject to a fee limitation, unless a disclosure statement is provided to the claimant, in the form and with the content specified in the act. The fee limitations are:

- For representatives operating under a power of attorney:[17]
  - 20 percent of the value of the property, not to exceed $1,000;
  - However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated before or if the claimant is outside of the United States.
- For purchasers obtaining rights under a purchase agreement:[18]
  - 20 percent discount off of the value of the property, not to exceed a discount of $1,000;
  - However, the $1,000 discount limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

The act also prescribes the form and content of the purchase agreement that transfers the right of the claimant to another person and the document granting the power of attorney.

The public policy of the state is to provide DFS with the first opportunity to locate the owner of the unclaimed property and for the owner to receive the full value of his or her property.[19] There are limitations on claiming by others through powers of attorney and purchase agreements. Powers of attorney and purchase agreements that are executed less than 45 days after the property is received by the DFS and that relate to accounts over $250 in value are void under the act.[20] The 45 day limit on the claims provides DFS the opportunity to attempt to locate the property's owner. However, placing time and value limits on claim eligibility requires DFS to track accounts and audit claims to identify the amount and timing of the claims. The DFS reports that this is inefficient and the public purpose can be served through other provisions of the act. DFS recommends repealing s. 717.1381, F.S., to eliminate administrative inefficiency.[21]

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[16] Only a Florida licensed attorney, a licensed Florida certified public accountant, a private investigator or an employee of a private investigator, or an employer of the private investigator if the employer holds a Class "A" license under ch. 493, F.S., may execute such purchase agreements. s. 717.1351, F.S. Additionally, the purchaser must be registered with DFS. DFS reports that there are currently 246 registrants under this provision. Florida Department of Financial Services, *Agency Analysis of 2016 SB 970*, p. 3 (Dec. 14, 2015) (on file with the Senate Committee on Judiciary).

[17] Section 717.135, F.S., requires the disclosure that the property is held by the DFS pursuant to the act, the mailing and Internet addresses of DFS, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and the categories of unclaimed property the claimant's representative is seeking to recover. The categories of unclaimed property are: cash accounts; stale dated checks; life insurance or annuity contract assets; utility deposits; securities or other interests in business associations; wages; accounts receivable; and contents of safe-deposit boxes.

[18] Section 717.1351, F.S. The content of the disclosure statement has the same elements as the disclosure described in s. 717.135, F.S., related to powers of attorney. However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

[19] Sections 717.118 and 717.1381, F.S.

[20] Section 717.1381, F.S.

[21] Florida Department of Financial Services, *Agency Analysis of 2016 SB 970*, p. 3 (Dec. 14, 2015) and email from Elizabeth Boyd, Director of Legislative Affairs, Department of Financial Services, *Re: 45 Day Issue* (Jan. 27, 2016) (on file with the Senate Committee on Judiciary).

Unclaimed Campaign Funds

Section 106.141, F.S., requires candidates for public office to dispose of the funds in their campaign account within 90 days after the date that their candidacy ended.[22] Paragraph 106.141(4)(a), F.S., specifies a variety of options for the disposal of surplus campaign funds. With certain exceptions, candidates may take any combination of the following actions when disposing of the surplus:

- Returning, pro rata to each contributor, the funds that have not been spent or obligated;
- Donating the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code;
- Giving not more than $25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member; or
- Giving the funds that have not been spent or obligated:
  - In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or
  - In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

If the candidate accepted contributions under the Florida Election Campaign Financing Act, the surplus funds must be returned to the General Revenue Fund, after satisfying certain monetary obligations. If the candidate takes office, they may transfer a limited amount of the funds to his or her office account.

Violations of the campaign finance law are subject to criminal penalties, both misdemeanors and felonies. Failure to properly dispose of surplus campaign funds is a first degree misdemeanor punishable by up to a year in jail and/or a fine of $1,000. Candidates are prohibited from accepting campaign contributions following the end of their candidacy. They are allowed to receive and deposit refund checks to be disposed of consistent with the requirements of law, as described above.

Chapter 717, F.S., does not address the treatment of unclaimed funds in the name of a campaign account. The department sees a small number of accounts reported each year in the name of a political candidate or campaign. Because a campaign ceases to exist at the end of the election cycle, there is no entity eligible to claim the funds.[23]

III. Effect of Proposed Changes:

Section 1 revises the definitions of "business association," "domicile," and "insurance company" to simplify their text and improve understanding. Limited liability companies are specifically included in the definition of "business association." A definition of "United States" is created to specify the meaning of that term, which is currently used throughout the act to determine various rights and conditions.

[22] The triggers for disposition are when the candidate withdraws their candidacy, becomes an unopposed candidate, is eliminated, or is elected. Section 106.141(1), F.S.

[23] Dept. of Financial Services, *Senate Bill 970 Analysis* (Dec. 14, 2015)(on file with the Senate Committee on Finance and Tax).

Section 2 of the bill provides that, if unclaimed property is owned by the campaign account of a candidate for public office, following a report of the property to the DFS, the property shall become the property of the state and the proceeds of the property shall be paid into the State School Fund.

Section 3 redefines what the value of a small estate account is. Generally, a claim for property related to the estate of a deceased person must be accompanied by an order from a probate court. However, there are exceptions for estates having an aggregate value of $5,000 or less if no probate proceeding is pending.[24] This section amends s. 717.1243, F.S., to increase the maximum threshold value of this small estate provision to $10,000 from $5,000.

Section 4 amends s. 717.1262, F.S., the provisions dealing with court documents. The section currently requires that a claimant whose right to property is based on a court document file a certified copy of the relevant court document with DFS. This section expands the requirement to include all pleadings filed with the court to establish the property right which were filed within the 180 days preceding the signing of the claim form.

Section 5 amends s. 717.1333, F.S., to authorize DFS to estimate the amount of unclaimed property held and due to DFS if the holder fails to produce records following a request by DFS. Currently, the holder of unclaimed property is obligated to report the value of property to DFS. If the holder's records are insufficient to permit preparation of the required report, the value of the property may be estimated. However, there is currently no authority for DFS to estimate the value of the property when the holder fails to produce the record.

Section 6 amends s. 717.135, F.S., which requires a claimant's representative to either give notice to a property owner that unclaimed property is held by the DFS Bureau of Unclaimed Property or limit the fees that a claimant's representative earns under a power of attorney to recover unclaimed property to 20 percent of the unclaimed property, not to exceed $1,000. The bill applies the requirements of the section to claims where probate proceedings must be initiated on behalf of a claimant for an estate that has never been probated. The bill also applies the requirements of the section to claims made by a person outside the United States.

Section 717.135, F.S., also requires a specific form be used to execute a limited power of attorney that discloses to the property owner the dollar value of the property and the percent of the property that is being paid to the property, and additional disclosures. The bill removes a provision in current law that allows a property locator that charges a flat fee to not include in the limited power of attorney form the percent of the property paid as compensation to the property locator.

Sections 6 and 7 require any authorization or agreement for the recovery or purchase of property to be personally signed and dated by the claimant. The date of the authorization or agreement cannot precede the date on the grant of limited power of attorney or purchase agreement. The effect is to have a compliant power of attorney or purchase agreement be the first agreement in the case. This facilitates getting the disclosure, if one is going to be used to remove the fee cap, in front of the claimant during the first step in the claims process. The change is meant to address

[24] Section 717.1243, F.S.

the problem of claimants being presented and obligated to noncompliant authorizations or agreements, only to later execute a compliant agreement, which misrepresents the factual circumstances of the representation and the lawfulness of the fee to DFS. The bill requires a copy of such authorizations or agreements to be filed with DFS along with the other required documents. Additionally, the bill requires DFS to deny any claim where the representative under an authorization or agreement refuses to reduce its fee to the maximum allowed by law, i.e., 20 percent of the value of the property, if the disclosure was required but not provided to the claimant timely. Taken together, the provisions of the bill creating ss. 717.135(5) and 717.1351(8), F.S., would allow the fee cap to be lifted when the specified disclosure is made at the time of the first engagement of services. Failure to do so limits fees to 20 percent of the value of the property or requires DFS' denial of the claim.

Section 7 amends s. 717.1351, F.S., which governs contracts to acquire ownership of unclaimed property from the person entitled to the unclaimed property. Current law limits the purchase price that may be offered if the purchaser does not disclose to the owner of unclaimed property that the property is being held by the Bureau of Unclaimed Property. If such notice is not provided, the purchase price may not discount the value of the unclaimed property more than 20 percent, up to a maximum discounted purchase price of $1,000. The bill applies the requirements of the section to purchase agreements where probate proceedings must be initiated on behalf of a seller for an estate that has never been probated. The bill also applies the requirements of the section to sellers located outside the United States.

Currently, s. 717.1351, F.S., requires that purchase agreements specify the percent of the property to be paid to the purchaser on a discrete line item of the purchase agreement pursuant to the form and content requirements of the act. However, this line may be deleted if the purchaser is paid a flat fee instead of a percentage of the recovery. The bill eliminates this exception and requires every purchase agreement to include the required text regarding the percent of the property to be paid to the purchaser and the insertion of the appropriate percentage figure, which varies depending upon the amount of the flat fee and the value of the property to be recovered.

The bill also expands the time period a purchaser of unclaimed property has to remit the purchase price to the seller to 30 days from 10 days after the execution of the purchase contract. The bill expands the requirement that the purchaser file with the DFS proof that the seller received the purchase price to include all forms of payment, rather than just payment by check. The bill also provides that if proof of payment is not provided, the claim is void.

Section 8 repeals s. 717.1381, F.S. This eliminates the 45 day waiting period for claims over $250 in value that are handled by a representative or purchaser. DFS reports that it will be able to maintain a waiting period using its authority under s. 717.117(3), F.S., and that the administrative efficiency will be improved by not having to audit claim filings for the timing of agreements and value of the claim for compliance with the repealed limitation.[25]

Section 9 retains the portion of legislative intent in s. 717.1381, F.S., regarding the right of the claimant to recover his or her property without charge, by moving it to s. 717.139, F.S. However,

[25] Supra note 20.

it does not preserve the legislative intent statement regarding the obligation of DFS to make a meaningful attempt to locate the claimant.

Section 10 deletes the authorization for registrants to receive social security numbers. Currently, individuals who register with DFS as potential purchasers under the act are permitted to receive the social security numbers of apparent property owners of property reported to DFS. This is in addition to other information related to the unclaimed property.

Section 11 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 970 allows for small estates up to $10,000 to file an affidavit with the department for a claim made by a beneficiary.

C. Government Sector Impact:

The bill requires unclaimed property in a campaign account for public office to escheat to the state. The Revenue Estimating Conference has not analyzed this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 717.101, 717.1243, 717.1262, 717.1333, 717.135, 717.1351, 717.139, and 717.1400.

This bill creates section 717.1235 of the Florida Statutes.

This bill repeals section 717.1381 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on February 9, 2016:

- Removes the section of the bill relating to "surplus trustees";
- Requires each court pleading filed within 180 days prior to a claim for unclaimed property to be filed with the Department of Financial Services;
- Requires all authorizations or agreements for representation regarding a claim for unclaimed property to meet specified requirements regarding accurate and personal completion by the claimant and allows for a claim to be denied if such agreements exceed the fee cap;
- Increases the maximum number of days for a claimant to be paid following a purchase agreement from 10 days to 30 days from the date of execution and voids the claim if proof of payment is not filed with the DFS;
- Restores a statement of legislative intent found in s.717.1381, F.S.
- Removes the section of the bill that expressed intent to apply a portion of the bill retroactively;
- Removes the section of the bill that deleted the $1,000 fee cap on agreements to recover or purchase unclaimed property that do not provide specified disclosures; and
- Removes the section of the bill requiring a registration fee for claimant representatives.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Richter

597-03219-16 2016970c1

A bill to be entitled

An act relating to unclaimed property; amending s. 717.101, F.S.; revising and providing definitions; creating s. 717.1235, F.S.; requiring unclaimed funds reported in the name of specified campaigns for public office to be deposited with the Chief Financial Officer to the credit of the State School Trust Fund; amending s. 717.1243, F.S.; revising the aggregate value that constitutes a small estate account; amending s. 717.1262, F.S.; requiring certain persons claiming entitlement to unclaimed property to file certified copies of specified pleadings with the Department of Financial Services; amending s. 717.1333, F.S.; revising requirements for the estimation of certain amounts due to the department; amending s. 717.135, F.S.; revising applicability; deleting a provision that allows specified wording on a certain power of attorney; providing requirements for a certain authorization or agreement to recover unclaimed property; requiring the department to deny a claim under certain circumstances; amending s. 717.1351, F.S.; revising requirements and conditions for contracts to acquire ownership of or entitlement to property; deleting a provision that allows specified wording on a purchase agreement; providing requirements for a certain authorization or agreement to purchase unclaimed property; requiring the department to deny a claim under certain circumstances; repealing s. 717.1381, F.S., relating to void unclaimed property powers of attorney and purchase agreements; amending s. 717.139, F.S.; providing legislative intent; amending s. 717.1400,

597-03219-16 2016970c1

F.S.; removing authorization for certain private investigators, public accountants, and attorneys to obtain social security numbers; providing an effective date.

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

Section 1. Subsections (4), (8), and (13) of section 717.101, Florida Statutes, are amended, present subsection (24) of that section is renumbered as subsection (25), and a new subsection (24) is added to that section, to read:

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(4) "Business association" means any corporation (other than a public corporation), joint stock company, investment company, business trust, partnership, limited liability company, or association of two or more individuals for business purposes ~~of two or more individuals~~, whether ~~or not~~ for profit or not for profit~~, including a banking organization, financial organization, insurance company, dissolved pension plan, or utility~~.

(8) "Domicile" means the state of incorporation for~~, in the case of~~ a corporation incorporated under the laws of a state~~;~~ ~~,~~ or for unincorporated business associations, the state where the business association is organized ~~and the state of the principal place of business, in the case of a person not incorporated under the laws of a state~~.

(13) "Insurance company" means an association, a corporation, or a fraternal or mutual benefit organization,

whether ~~or not~~ for profit or not for profit, which is engaged in providing insurance coverage~~, including, by way of illustration and not limitation, accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance~~.

(24) "United States" means any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

Section 2. Section 717.1235, Florida Statutes, is created to read:

717.1235 Dormant campaign accounts; report of unclaimed property.—Unclaimed funds reported in the name of a campaign for public office which is required to dispose of surplus funds in its campaign account pursuant to s. 106.141 must be deposited with the Chief Financial Officer to the credit of the State School Trust Fund.

Section 3. Subsection (4) of section 717.1243, Florida Statutes, is amended to read:

717.1243 Small estate accounts.—

(4) This section only applies if all of the unclaimed property held by the department on behalf of the owner has an aggregate value of $10,000 ~~$5,000~~ or less and no probate proceeding is pending.

Section 4. Section 717.1262, Florida Statutes, is amended to read:

717.1262 Court documents.—Any person who claims entitlement

to unclaimed property by reason of a court document shall file a certified copy of the court document with the department. The person shall also file with the department certified copies of all pleadings to obtain a court document establishing entitlement which were filed with the court within 180 days before the date the claim form was signed by the claimant or claimant's representative.

Section 5. Subsection (2) of section 717.1333, Florida Statutes, is amended to read:

717.1333 Evidence; estimations; audit reports, examiner's worksheets, investigative reports, other related documents.—

(2) If the records of the holder which ~~that~~ are available for the periods subject to this chapter are insufficient to permit the preparation of a report of the unclaimed property due and owing by a holder, or if the holder fails to provide records after being requested to do so, the amount due to the department may be reasonably estimated.

Section 6. Subsection (2) and paragraph (g) of subsection (4) of section 717.135, Florida Statutes, are amended, present subsections (5) and (6) of that section are renumbered as subsections (6) and (7), respectively, and a new subsection (5) is added to that section, to read:

717.135 Power of attorney to recover reported property in the custody of the department.—

(2) A power of attorney described in subsection (1) must:

(a) Limit the fees and costs for services to 20 percent per unclaimed property account held by the department. Fees and costs for cash accounts shall be based on the value of the property at the time the power of attorney is signed by the

claimant. Fees and costs for accounts containing securities or other intangible ownership interests, which securities or interests are not converted to cash, shall be based on the purchase price of the security as quoted on a national exchange or other market on which the property is regularly traded at the time the securities or other ownership interest is remitted to the claimant or the claimant's representative. Fees and costs for tangible property or safe-deposit box accounts shall be based on the value of the tangible property or contents of the safe-deposit box at the time the ownership interest is transferred or remitted to the claimant. Total fees and costs on any single account owned by a natural person residing in this country must not exceed $1,000; or

(b) Fully disclose that the property is held by the Bureau of Unclaimed Property of the Department of Financial Services pursuant to this chapter, the mailing address of the bureau, the Internet address of the bureau, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and identify which of the following categories of unclaimed property the claimant's representative is seeking to recover, as reported by the holder:

1. Cash accounts.
2. Stale dated checks.
3. Life insurance or annuity contract assets.
4. Utility deposits.
5. Securities or other interests in business associations.
6. Wages.
7. Accounts receivable.

8. Contents of safe-deposit boxes.

~~This subsection shall not apply if probate proceedings must be initiated on behalf of the claimant for an estate that has never been probated or if the unclaimed property is being claimed by a person outside of the United States.~~

(4)

(g) This section does not prohibit the:

1. Use of bolding, italics, print of different colors, and text borders as a means of highlighting or stressing certain selected items within the text.

2. Placement of the name, address, and telephone number of the representative's firm or company in the top margin above the words "POWER OF ATTORNEY." No additional writing of any kind may be placed in the top margin including, but not limited to, logos, license numbers, Internet addresses, or slogans.

3. Placement of the word "pending" prior to the words "NET AMOUNT TO BE PAID TO CLAIMANT," if it is not yet possible to determine the percentage interest of an heir or legatee prior to a determination on the issue by the probate court.

4. Deletion of the words "Number of Shares of Stock (If Applicable)" if the agreement does not relate to the recovery of securities.

~~5. Deletion of the words "Percent to Be Paid as Compensation to Claimant's Representative" if the power of attorney provides for a flat fee to be paid as compensation to the claimant's representative.~~

(5)(a) Any other authorization or agreement to recover unclaimed property which is executed by or between a claimant's

representative and claimant must be signed and personally dated by the claimant. The date affixed to the authorization or agreement by the claimant may not be earlier than the date personally affixed by the claimant to the original limited power of attorney under this section. A copy of the authorization or agreement must be filed with the original claim submitted to the department, along with the statutorily compliant original power of attorney under this section.

(b) If the claimant's representative's fee for a document described in this subsection exceeds 20 percent on any given claim, s. 717.124(1)(d) applies.

Section 7. Subsections (2) and (4), paragraph (d) of subsection (7), and subsection (8) of section 717.1351, Florida Statutes, are amended to read:

717.1351 Acquisition of unclaimed property.—

(2) All contracts to acquire ownership of or entitlement to unclaimed property from the person or persons entitled to the unclaimed property must be in 10-point type or greater and must:

(a) Have a purchase price that discounts the value of the unclaimed property at the time the agreement is executed by the seller at no greater than 20 percent per account held by the department. An unclaimed property account must not be discounted in excess of $1,000~~. However, the $1,000 discount limitation does not apply if probate proceedings must be initiated on behalf of the seller for an estate that has never been probated or if the seller of the unclaimed property is not a natural person or is a person outside the United States~~; or

(b) Fully disclose that the property is held by the Bureau of Unclaimed Property of the Department of Financial Services

pursuant to this chapter, the mailing address of the bureau, the Internet address of the bureau, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and identify which of the following categories of unclaimed property the buyer is seeking to purchase as reported by the holder:

1. Cash accounts.
2. Stale dated checks.
3. Life insurance or annuity contract assets.
4. Utility deposits.
5. Securities or other interests in business associations.
6. Wages.
7. Accounts receivable.
8. Contents of safe-deposit boxes.

The purchase agreement described in this paragraph must state in 12-point type or greater in the order indicated with the blank spaces accurately completed:

FULL DISCLOSURE STATEMENT

The property is currently held by the State of Florida Department of Financial Services, Bureau of Unclaimed Property, pursuant to chapter 717, Florida Statutes. The mailing address of the Bureau of Unclaimed Property is ..... The Internet address of the Bureau of Unclaimed Property is .....

The property was remitted by: .....

Date of last contact: .....

Property category: .....

Immediately above the signature line for the seller, the purchase agreement described in this paragraph must state in 12-point type or greater:

Seller agrees, by signing below, that the FULL DISCLOSURE STATEMENT has been read and fully understood.

(4) Any contract to acquire ownership of or entitlement to unclaimed property from the person or persons entitled to the unclaimed property must provide for the purchase price to be remitted to the seller or sellers within 30 ~~10~~ days after the execution of the contract by the seller or sellers. The contract must specify the unclaimed property account number, the name of the holder who reported the property to the department, the category of unclaimed property, the value of the unclaimed property account, and the number of shares of stock, if applicable. Proof that the seller received ~~of~~ payment ~~by check~~ must be filed with the department with the claim. If proof of payment is not provided, the claim is void.

(7) This section does not prohibit the:

~~(d) Deletion of the words "Percent of Property to be Paid to Buyer," if the purchase agreement provides for a flat fee to~~

~~be paid as compensation to the buyer.~~

(8)(a) Any other authorization or agreement to purchase unclaimed property which is executed by or between a registrant and seller must be signed and personally dated by the seller. The date affixed to the authorization or agreement by the seller may not be earlier than the date personally affixed by the seller to the original purchase agreement under this section. A copy of the authorization or agreement must be filed with the original claim submitted to the department, along with the statutorily compliant original purchase agreement under this section.

(b) If the claimant's representative's purchase price paid to the seller on a document referred to in this subsection reduces the purchase price by more than 20 percent on any given claim, s. 717.124(1)(d) applies.

(c) This section does not supersede the licensing requirements of chapter 493.

Section 8. Section 717.1381, Florida Statutes, is repealed.

Section 9. Section 717.139, Florida Statutes, is amended to read:

717.139 Uniformity of application and construction.—Protecting the interests of owners of unclaimed property is declared to be the public policy of this state. It is in the best interests of the owners of unclaimed property that they have the opportunity to receive the full amount of the unclaimed property returned to them without deduction of any fees. This chapter shall be applied and construed as to effectuate its general purpose of protecting the interest of missing owners of property, while providing that the benefit of all unclaimed and

abandoned property shall go to all the people of the state, and to make uniform the law with respect to the subject of this chapter among states enacting it.

Section 10. Subsections (1), (2), and (3) of section 717.1400, Florida Statutes, are amended to read:

717.1400 Registration.—

(1) In order to file claims as a claimant's representative, acquire ownership of or entitlement to unclaimed property, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and~~,~~ numbers of reported shares of stock~~, and social security numbers~~ held by the department, a private investigator holding a Class "C" individual license under chapter 493 must register with the department on such form as the department shall prescribe by rule, and must be verified by the applicant. To register with the department, a private investigator must provide:

(a) A legible copy of the applicant's Class "A" business license under chapter 493 or that of the applicant's firm or employer which holds a Class "A" business license under chapter 493.

(b) A legible copy of the applicant's Class "C" individual license issued under chapter 493.

(c) The business address and telephone number of the applicant's private investigative firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the private investigator, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the private investigator's firm or employer which holds a Class "A" business license under chapter 493.

(2) In order to file claims as a claimant's representative, acquire ownership of or entitlement to unclaimed property, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and~~,~~ numbers of reported shares of stock~~, and social security numbers~~ held by the department, a Florida-certified public accountant must register with the department on such form as the department shall prescribe by rule, and must be verified by the applicant. To register with the department a Florida-certified public accountant must provide:

(a) The applicant's Florida Board of Accountancy number.

(b) A legible copy of the applicant's current driver license showing the full name and current address of such person. If a current driver license is not available, another form of identification showing the full name and current address of such person or persons shall be filed with the department.

(c) The business address and telephone number of the applicant's public accounting firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the Florida-certified public accountant, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to

disburse funds by electronic funds transfer.

(f) The tax identification number of the accountant's public accounting firm employer.

(3) In order to file claims as a claimant's representative, acquire ownership of or entitlement to unclaimed property, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and~~,~~ numbers of reported shares of stock~~, and social security numbers~~ held by the department, an attorney licensed to practice in this state must register with the department on such form as the department shall prescribe by rule, and must be verified by the applicant. To register with the department, such attorney must provide:

(a) The applicant's Florida Bar number.

(b) A legible copy of the applicant's current driver license showing the full name and current address of such person. If a current driver license is not available, another form of identification showing the full name and current address of such person or persons shall be filed with the department.

(c) The business address and telephone number of the applicant's firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the attorney, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the attorney's firm or employer.

Section 11. This act shall take effect July 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 Appropriations

BILL:	CS/SB 984
INTRODUCER:	Higher Education Committee and Senator Legg
SUBJECT:	Education Access and Affordability
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 984 modifies requirements related to higher education textbooks and instructional materials affordability and promotes public awareness on higher education costs. Specifically, the bill:

- Expands textbook affordability provisions to include instructional materials.
- Modifies the textbook and instructional materials affordability policies, procedures, and guidelines adopted by the State Board of Education and the Board of Governors for the State University System of Florida to include new issues and specifies reporting requirements regarding textbooks and instructional materials.
- Establishes college affordability provisions to identify strategies and initiatives to reduce the cost of higher education, and specifies annual reporting requirements regarding college affordability.
- Establishes notification requirements to inform students and the public, clearly and specifically, about any upcoming institutional boards of trustees meeting at which a vote will be taken on proposed increases in tuition and fees.

The bill has no impact on state funds. The provisions of this bill may have a positive impact on the private sector by establishing several cost-saving policies and procedures for students and their families.

The bill takes effect July 1, 2016.

II. Present Situation:

The Legislature has established several mechanisms to maintain higher education access and affordability through strategies to reduce the costs associated with textbook and instructional materials and tuition and fees.

Textbook Affordability

Federal Law

The Higher Education Opportunity Act (HEOA)[1] was enacted on August 14, 2008, and reauthorizes the Higher Education Act of 1965, as amended.[2] The HEOA imposes certain disclosure provisions to "ensure that students have timely access to affordable course materials at postsecondary institutions receiving Federal financial assistance."[3] The provisions require postsecondary institutions to:[4]

- Include on their online course schedules certain information (e.g., the International Standard Book Number (ISBN) or if the ISBN is not available, the author, title, publisher, and copyright date) for required and recommended textbooks and supplemental material. Postsecondary institutions must include on its written course schedule a reference to the textbook information available online and the Internet address to the course schedule.
- Provide to their college bookstores, upon request by such bookstores, information regarding the course schedule for the subsequent academic period, required and recommended textbooks and supplemental materials, and student enrollment.

Additionally, institutions are encouraged to provide information regarding renting textbooks, purchasing used textbooks, textbook buy-back programs, and alternative content delivery programs.[5]

The HEOA also requires textbook publishers to provide certain information regarding textbook and supplemental materials to faculty in charge of selecting course materials at postsecondary institutions such as the price of the textbooks, a description of substantial content revisions, and whether the textbooks are available in other formats and the related costs to the institution and the general public.[6]

The HEOA directed the Government Accountability Office (GAO) to study the implementation of the HEOA textbook provisions.[7]

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[1] Pub. L. No. 110-315, s. 112(a), 122 Stat. 3107 (Aug. 14, 2008), *codified at* 20 U.S.C. s. 1015b.
[2] U.S. Department of Education, *The Higher Education Opportunity Act (Dec. 2008), available at* http://ifap.ed.gov/dpcletters/attachments/GEN0812FP0810AttachHEOADCL.pdf, at 1 of 219.
[3] *Id* at 34-35 of 219.
[4] *Id* at 35 of 219.
[5] *Id*.
[6] *Id*.
[7] *Id*.

The GAO reported that "the rising costs of postsecondary education present challenges to maintaining college access and affordability."[8] Between 2002 and 2012, the cost of textbooks increased at an average of 6 percent per year while tuition and fees increased at an average of 7 percent and overall prices increased at an average of 2 percent per year.[9] Over this ten-year time period, new textbook prices increased by a total of 82 percent, tuition and fees increased by 89 percent and overall prices increased by 28 percent.[10] The implementation of HEOA's textbook provisions has afforded students and their parents increased access to clear and early information about the cost of textbooks.[11] However, "although students are the end consumers, faculty are responsible for selecting which textbooks students will need, thereby limiting students' ability to allay costs."[12] Typically, faculty prioritize selecting the most appropriate materials for their courses over pricing and format considerations.[13] Nevertheless, new products, formats, and delivery channels provide students many options for obtaining the course materials.[14]

State Law

The Florida Legislature enacted the textbook affordability law in 2008. [15] The law prohibits employees of the Florida College System (FCS) and state university system from receiving anything of value in exchange for requiring students to purchase specific textbooks for coursework and instruction, and specifies notification requirements regarding the required textbooks.[16] Each FCS institution and state university must post on its website, at least 30 days prior to the first day of class for each term, a list of each textbook required for each course offered at the institution during the upcoming term.[17] The posted list must include the ISBN for each required textbook and other relevant information necessary to identify the specific textbook or textbooks required for each course.[18]

Additionally, the textbook affordability law requires the State Board of Education (SBE) and the Board of Governors for the State University System of Florida (BOG) to adopt policies, procedures, and guidelines for implementation by FCS institutions and state universities, respectively, that further efforts to minimize the costs of textbooks for students attending such institutions while maintaining the quality of education and academic freedom.[19] The policies, procedures, and guidelines must provide for the following:[20]

- Textbook adoptions are made with sufficient lead time to bookstores so as to confirm availability of the requested materials and ensure maximum availability of used books.

[8] United States Government Accountability Office, *College Textbooks: Student Have Greater Access to Textbook Information* (June 2013), *available at* http://www.gao.gov/assets/660/655066.pdf, at 1.
[9] *Id* at 6.
[10] United States Government Accountability Office, *College Textbooks: Student Have Greater Access to Textbook Information* (June 2013), *available at* http://www.gao.gov/assets/660/655066.pdf, at 6.
[11] *Id* at 22.
[12] *Id*.
[13] *Id* at 14.
[14] *Id* at 22.
[15] Section 1, ch. 2008-78, L.O.F., *codified at* s. 1004.085, F.S.
[16] Section 1004.085(1) and (3), F.S.
[17] Section 1004.085(3), F.S.; *see also* Rule 6A-14.092, F.A.C. and Board of Governors Regulation 8.003.
[18] *Id*.
[19] Section 1004.085(4), F.S.
[20] *Id*.

- In the textbook adoption process, the intent to use all items ordered, is confirmed by the course instructor or academic department offering the course before the adoption is finalized.
- A course instructor or the academic department offering the course determines, before a textbook is adopted, the extent to which a new edition differs significantly and substantively from earlier versions and the value of changing to a new edition or the extent to which an open access textbook may exist and be used.
- The establishment of policies must address the availability of required textbooks to students who are otherwise unable to afford the cost, including consideration of the extent to which an open-access textbook may be used.
- Course instructors and academic departments are encouraged to participate in the development, adaptation, and review of open-access textbooks, especially open-access textbooks for high-demand general education courses.

The SBE and BOG have adopted rules and regulations, respectively, to implement the statutory provisions regarding textbook affordability.[21]

During the Spring 2012 term, the Florida Distance Learning Consortium (FDLC) conducted a survey of students from 11 state universities and 22 of the 28 FCS institutions.[22] The survey revealed that a majority of students (54%) spent over $300 on textbooks during the Spring 2012 term.[23] Nineteen percent of the students spent more than $500 on textbooks during the same period.[24] The average student purchased 1.6 textbooks that were not used during the student's academic career.[25] The survey also indicated that financial aid does not always fully cover the costs of textbooks.[26] Additionally, students were generally unaware of open textbooks and their potential for use as supplementary text or as means to reduce costs.[27]

College Affordability

Attaining higher education is a growing challenge for students and their families nationally as tuition and fees have risen faster than incomes and the Pell Grant has lost buying power over the last 30 years.[28] In 1983-1984, the maximum Pell Grant covered 52 percent of the average annual costs of attending a U.S. public four-year college as compared to 31 percent in 2013-2014.[29]

Nationwide, the average annual costs for an in-state undergraduate student to attend a public four-year college reached $18,100 in 2013-2014, which is 126 percent higher than the 1983-1984 average.[30] At public two-year colleges, the average annual cost of attendance rose 57 percent to

[21] Rule 6A-14.092, F.A.C. and Board of Governors Regulation 8.003.
[22] Florida Virtual Campus, *2012 Florida Student Textbook Survey*, at 1, on file with the Senate Committee on Higher Education staff.
[23] *Id*, at 2.
[24] *Id*.
[25] *Id* at 8.
[26] *Id* at 7-8.
[27] *Id* at 2.
[28] The Southern Regional Education Board, *Fact Book on Higher Education* (Sep. 2015), *available at* http://publications.sreb.org/2015/2015_Fact_Book_webversion.pdf, at i. The federal Pell Grant is the nation's largest need-based grant aid program for college students. *Id* at 103.
[29] *Id* at 103.
[30] The cost of attendance includes tuition, required fees, and room and board. *Id* at 101.

$9,300 over the 30-year period.[31] The tuition and required fees portion of the college attendance costs at public four-year colleges typically range from 35 percent to 40 percent of the full costs of attendance.[32]

In Florida, the standard tuition is $71.98 per credit hour at FCS institutions[33] and $105.07 per credit hour at state universities.[34] In addition to tuition, students pay for fees, books and supplies, room and board, and other on campus expenses. The average annual cost of attendance (COA)[35] for a full-time, Florida resident student enrolled at a state university or college living on campus has increased over the years. Specifically, during the 2014-2015 academic year, the average COA for a full-time, undergraduate Florida resident enrolled at a state university living on campus was $20,911, representing approximately 2.5 percent increase since the 2012-2013 academic year.[36] In comparison, the average COA for a full-time Florida resident enrolled at an FCS institution living on campus during the 2014-2015 academic year was $15,969, representing just over a 1 percent increase during the same period.[37] The average COA for a full-time Florida resident enrolled at a state university or FCS institution living off campus, not with his or her family, also increased slightly between the 2012-2013 and 2014-2015 academic years.[38]

The COA data reflect general estimates of higher education costs and do not factor in financial aid that students may receive.[39]

III. Effect of Proposed Changes:

This bill modifies requirements related to higher education textbooks and instructional materials affordability and promotes public awareness on higher education costs.

[31] *Id*.
[32] *Id* at 102.
[33] The standard tuition is for resident and nonresident students enrolled in advanced and professional, postsecondary vocational, developmental education, or educator preparation institute programs. Nonresident students must also pay an out-of-state fee in the amount of $215.94 per credit hour. Section 1009.23(3)(a), F.S. For students who are residents for tuition purposes and enrolled in baccalaureate degree programs at public colleges, the tuition is $91.79 per credit hour. Section 1009.23(3)(b), F.S.
[34] Section 1009.24(4)(a), F.S.
[35] The cost of attendance includes tuition and fees, books and supplies, room and board, and other on-campus expenses for full-time, first-time degree- or certificate-seeking students. The COA data are based on information submitted by the colleges and universities annually to the Integrated Postsecondary Education Data System (IPEDS). Email, Florida Department of Education, Division of Florida Colleges (Jan. 5, 2016). Federal guidelines for reporting COA data to the IPEDS is not standardized. For instance, the data for the state universities are based on a 30 credit hour student course workload compared to a 24 credit hour student course workload. Additionally, the non-tuition components of the COA are estimates that are based on institutional surveys. Email, Board of Governors (Jan. 5, 2016).
[36] Emails, Florida Department of Education, Division of Florida Colleges (Jan. 4 and 5, 2016); *see also* Email, Board of Governors (Jan. 5, 2016).
[37] Only four of the 28 Florida College System institutions report the on-campus cost of attendance data. Email, Florida Department of Education, Division of Florida Colleges (Jan. 4, 2016)
[38] Emails, Florida Department of Education, Division of Florida Colleges (Jan. 4 and 5, 2016); *see also* Email, Board of Governors (Jan. 5, 2016).
[39] Email, Board of Governors (Jan. 5, 2016).

Textbook Affordability

The bill modifies the textbook affordability law[40] to include instructional materials and defines "instructional materials" as educational materials, in either printed or digital format, which are required or recommended for use within a course. The bill also adds recommended textbooks and instructional materials to the textbook affordability provisions which are currently limited to the required textbooks only.

In addition, the bill adds instructional materials to the costs that must be excluded from the tuition for the Preeminent State Research University Institute for Online Learning.[41] In effect, the bill aligns instructional materials to the textbooks-related policies for any programs offered through the Preeminent State Research University Institute for Online Learning.

Policies and Reporting Requirements

The bill modifies the textbook and instructional materials affordability policies, procedures, and guidelines, which must be adopted by the State Board of Education (SBE) and the Board of Governors for the State University System of Florida (BOG), to include new issues addressing:

- The establishment of deadlines for instructors or departments to notify the college or university bookstore, as applicable, of the required and recommended textbooks and instructional materials so that the bookstore may verify availability and explore lower cost options and alternatives with faculty when academically appropriate.
- Consultation with school districts to identify practices that impact the cost of dual enrollment textbooks and instructional materials to the school districts, including, but not limited to, the length of time that such textbooks and instructional materials remain in use.
- Selection of textbooks and instructional materials through cost-benefit analyses that help students obtain the highest quality product at the lowest available price by considering specified options (e.g., purchasing digital textbooks in bulk, expanding the use of open-access textbooks and instructional materials, providing rental options for textbook and instructional materials, and developing mechanisms to assist in buying, renting, selling, and sharing textbooks and instructional materials).

The bill also requires each Florida College System (FCS) institution and state university board of trustees to examine each semester the cost of textbooks and instructional materials by course and course section for all general education course offerings. The purpose for such examination is to identify any variance in the cost of textbooks and instructional materials among different sections of the same course and the percentage of textbooks and instructional materials that remain in use for more than one term. Courses with a wide variance in textbooks and instructional materials costs among sections or with frequent changes in textbooks and instructional materials must be reported to the appropriate academic department chair for review. The bill specifies a July 1, 2018 deadline for repeal of these general education course provisions.

[40] Section 1004.085, F.S.

[41] A state research university must meet all 12 of the academic and research excellence standards that are specified in law, as verified by the BOG, to establish an institute for online learning for offering high quality, fully online baccalaureate degree programs. Section 1001.7065(4), F.S. Currently, the University of Florida is the only state research university to have an institute for online learning based on meeting the specified criteria. Board of Governors, *Advisory Board for UF Online*, http://www.flbog.edu/about/taskforce/uf_online_advisory.php (last visited Jan. 5, 2016).

Additionally, the bill specifies the following new reporting requirements for the boards of trustees and chancellors of Florida College System (FCS) institutions and state universities:

- The board of trustees of each FCS institution and state university must annually report, by September 30, specified textbook and instructional material information to the Chancellor of the Florida College System or the Chancellor of the State University System, as applicable (e.g., textbooks and instructional materials selection process for general education courses with a wide cost variance and high-enrollment courses, and specific initiatives of the institution to reduce the cost of textbooks and instructional materials).
- Each chancellor must submit to the SBE or the BOG, as applicable, by November 1 of each year, a summary of the specified textbook and instructional materials information provided by the institution boards of trustees.

Publishing the information related to textbooks and instructional materials will provide students and parents, on behalf of their child, greater access to such information and the ability to plan ahead for higher education in the state of Florida. Cost-benefit analyses will assist with identifying mechanisms to reduce the costs associated with textbooks and instructional materials.

Notification Requirements

The bill promotes public awareness about textbook and instructional materials costs by requiring each FCS institution and state university to prominently post in the institution's course registration system and on the institution's website, a hyperlink to lists of required and recommended textbooks and instructional materials for at least 95 percent of the courses and course sections offered by the institution during the upcoming term. The bill also changes the statutory deadline for posting the textbook information from at least 30 days to at least 45 days before the first day of class for each term, requiring the institutions to post the specified information sooner than is required under current law. Such information, made available for a majority of courses in advance of the upcoming term, will help students plan ahead for course registration and course workload.

College Affordability

The bill establishes college affordability provisions and provides students and the public, in general, greater access to information regarding tuition and fees.

Policies and Reporting Requirements

The bill requires the BOG and the SBE to annually identify college affordability strategies and initiatives that must, at a minimum, evaluate the impact of:

- Tuition and fees on undergraduate, graduate, and professional students at public colleges and universities and graduate assistants employed by public universities.
- Federal, state, and institutional financial aid policies on the actual cost of attendance for students and their families.
- The costs of textbooks and instructional materials.

The bill also eliminates the BOG's ability to delegate authority to the university boards of trustees regarding establishing tuition for graduate and professional programs and out-of-state fees for all programs. As a result, state universities, on their own, will not be able to raise the

tuition for graduate and professional programs and out-of-state fees for all programs without seeking approval from the BOG.

Additionally, the bill establishes reporting requirements for the SBE and the BOG. Each board must annually, by December 31, report on its college affordability initiatives to the Governor, President of the Senate, and Speaker of the House of Representatives.

Notification Requirements

The bill requires each FCS institution and state university to notify all enrolled students and the public about any upcoming institutional boards of trustees meetings at which a vote will be taken on proposed increases in tuition and fees. At least 28 days before the scheduled meeting, such notification must be posted on the homepage of the institution's website, issued in a press release, and must include the following:

- Date and time of the meeting.
- Specific details of the existing tuition and fees, the rationale for the proposed increase, and the use for the proposed increase.

The bill takes effect July 1, 2016.

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 various cost-saving provisions of CS/SB 984 will save students and their families an indeterminable amount of money by expanding current textbook affordability provisions to all instructional materials, requiring the Board of Governors and the State Board of Education to annually identify strategies to promote college affordability and allowing students more time to review tuition and fee increases.

C. Government Sector Impact:

The bill has no impact on state funds. The Board of Governors indicated that the implementation of the bill can be accomplished with currently available resources but would likely require additional staff time and effort. [42]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.7065, 1004.085, 1009.23, and 1009.24.

This bill creates section 1004.084 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 Higher Education on January 11, 2016:
The committee substitute maintains the substance of SB 984 with some modifications. The strike-all amendment:

- Changed the deadline within which the institutions must post required and recommended textbooks and instructional materials information to at least 45 days before the first day of class for each term.
- Changed the percentage of courses for which such information must be posted from to 95 percent of the courses and course sections offered in the upcoming term.
- Modified the textbook and instructional materials policies to require the State Board of Education (SBE) and the Board of Governors (BOG) to establish deadlines within which instructors or departments must notify the respective college or university bookstore about the required and recommended textbooks and instructional materials.
- Modified the textbook and instructional materials reporting requirements.
- Established requirements for the boards of trustees to examine the cost of textbooks and instructional materials for all general education course offerings to identify cost variance among different sections of the same course, and specified July 1, 2018 deadline for repeal of such provisions.
- Deleted the provision requiring certain institutions to submit quarterly reports.

[42] Florida Board of Governors, 2016 Agency Legislative Bill Analysis for SB 984 (Jan. 15, 2016)

- Eliminated the BOG's ability to delegate authority to the university boards of trustees regarding establishing tuition for graduate and professional programs and out-of-state fees for all programs.
- Specified that the BOG and the SBE include in their strategies to promote college affordability, the impact of federal, state, and institutional financial aid on the actual cost of attendance for students.

B. Amendments:

None.

By the Committee on Higher Education; and Senator Legg

589-02004-16 2016984c1

A bill to be entitled

An act relating to education access and affordability; amending s. 1001.7065, F.S.; specifying that the costs of instructional materials are not included in tuition for certain online degree programs; creating s. 1004.084, F.S.; requiring the Board of Governors and the State Board of Education to annually identify strategies to promote college affordability; requiring the Board of Governors of the State University System and the State Board of Education to submit annual reports to the Governor and Legislature relating to college affordability; amending s. 1004.085, F.S.; revising provisions relating to textbook affordability to include instructional materials; defining the term "instructional materials"; specifying that Florida College System or state university employees may not receive anything of value in exchange for instructional materials; requiring Florida College System institution and state university boards of trustees to identify wide variances in the costs of, and frequency of changes in the selection of, textbooks and instructional materials for certain courses; requiring the boards of trustees to send a list of identified courses to the academic department chairs for review; providing for legislative review and repeal of specified provisions; requiring Florida College System institutions and state universities to post certain information on their websites; requiring the State Board of Education and Board of Governors to receive input from specified individuals and entities before adopting textbook and instructional materials affordability policies; requiring postsecondary

589-02004-16 2016984c1

institutions to consult with certain school districts to identify certain practices; requiring cost-benefit analyses relating to textbooks and instructional materials; providing reporting requirements; amending s. 1009.23, F.S.; requiring Florida College System institutions to provide a public notice relating to increases in tuition and fees; amending s. 1009.24, F.S.; requiring state universities to provide a public notice relating to increases in tuition and fees; providing an effective date.

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

Section 1. Paragraph (k) of subsection (4) of section 1001.7065, Florida Statutes, is amended to read:

1001.7065 Preeminent state research universities program.—

(4) PREEMINENT STATE RESEARCH UNIVERSITY INSTITUTE FOR ONLINE LEARNING.—A state research university that, as of July 1, 2013, meets all 12 of the academic and research excellence standards identified in subsection (2), as verified by the Board of Governors, shall establish an institute for online learning. The institute shall establish a robust offering of high-quality, fully online baccalaureate degree programs at an affordable cost in accordance with this subsection.

(k) The university shall establish a tuition structure for its online institute in accordance with this paragraph, notwithstanding any other provision of law.

1. For students classified as residents for tuition purposes, tuition for an online baccalaureate degree program

shall be set at no more than 75 percent of the tuition rate as specified in the General Appropriations Act pursuant to s. 1009.24(4) and 75 percent of the tuition differential pursuant to s. 1009.24(16). No distance learning fee, fee for campus facilities, or fee for on-campus services may be assessed, except that online students shall pay the university's technology fee, financial aid fee, and Capital Improvement Trust Fund fee. The revenues generated from the Capital Improvement Trust Fund fee shall be dedicated to the university's institute for online learning.

2. For students classified as nonresidents for tuition purposes, tuition may be set at market rates in accordance with the business plan.

3. Tuition for an online degree program shall include all costs associated with instruction, materials, and enrollment, excluding costs associated with the provision of textbooks and instructional materials pursuant to s. 1004.085 and physical laboratory supplies.

4. Subject to the limitations in subparagraph 1., tuition may be differentiated by degree program as appropriate to the instructional and other costs of the program in accordance with the business plan. Pricing must incorporate innovative approaches that incentivize persistence and completion, including, but not limited to, a fee for assessment, a bundled or all-inclusive rate, and sliding scale features.

5. The university must accept advance payment contracts and student financial aid.

6. Fifty percent of the net revenues generated from the online institute of the university shall be used to enhance and

enrich the online institute offerings, and 50 percent of the net revenues generated from the online institute shall be used to enhance and enrich the university's campus state-of-the-art research programs and facilities.

7. The institute may charge additional local user fees pursuant to s. 1009.24(14) upon the approval of the Board of Governors.

8. The institute shall submit a proposal to the president of the university authorizing additional user fees for the provision of voluntary student participation in activities and additional student services.

Section 2. Section 1004.084, Florida Statutes, is created to read:

1004.084 College affordability.—

(1) The Board of Governors and the State Board of Education shall annually identify strategies to promote college affordability for all Floridians by evaluating, at a minimum, the impact of:

(a) Tuition and fees on undergraduate, graduate, and professional students at public colleges and universities and graduate assistants employed by public universities.

(b) Federal, state, and institutional financial aid policies on the actual cost of attendance for students and their families.

(c) The costs of textbooks and instructional materials.

(2) By December 31 of each year, beginning in 2016, the Board of Governors and the State Board of Education shall submit a report on their respective college affordability initiatives to the Governor, the President of the Senate, and the Speaker of

the House of Representatives.

Section 3. Section 1004.085, Florida Statutes, is amended to read:

1004.085 Textbook and instructional materials affordability.—

(1) As used in this section, the term "instructional materials" means educational materials for use within a course which may be available in printed or digital format.

(2) ~~(1)~~ An ~~No~~ employee of a Florida College System institution or state university may not demand or receive any payment, loan, subscription, advance, deposit of money, service, or anything of value, present or promised, in exchange for requiring students to purchase a specific textbook or instructional material for coursework or instruction.

(3) ~~(2)~~ An employee may receive:

(a) Sample copies, instructor copies, or instructional materials. These materials may not be sold for any type of compensation if they are specifically marked as free samples not for resale.

(b) Royalties or other compensation from sales of textbooks or instructional materials that include the instructor's own writing or work.

(c) Honoraria for academic peer review of course materials.

(d) Fees associated with activities such as reviewing, critiquing, or preparing support materials for textbooks or instructional materials pursuant to guidelines adopted by the State Board of Education or the Board of Governors.

(e) Training in the use of course materials and learning technologies.

(4) Each Florida College System institution and state university board of trustees shall, each semester, examine the cost of textbooks and instructional materials by course and course section for all general education courses offered at the institution to identify any variance in the cost of textbooks and instructional materials among different sections of the same course and the percentage of textbooks and instructional materials that remain in use for more than one term. Courses that have a wide variance in costs among sections or that have frequent changes in textbook and instructional materials selections shall be identified and a list of such courses sent to the appropriate academic department chair for review. This subsection is repealed July 1, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(5) ~~(3)~~ Each Florida College System institution ~~institutions~~ and state university ~~universities~~ shall post prominently in the course registration system and on its website ~~on their websites~~, as early as is feasible, but at least 45 ~~not less than 30~~ days before ~~prior to~~ the first day of class for each term, a hyperlink to lists ~~list~~ of ~~each textbook~~ required and recommended textbooks and instructional materials for at least 95 percent of all courses and ~~each~~ course sections offered at the institution during the upcoming term. The lists ~~posted list~~ must include the International Standard Book Number (ISBN) for each required and recommended textbook and instructional material or other identifying information, which must include, at a minimum, all of the following: the title, all authors listed, publishers, edition number, copyright date, published date, and other relevant information necessary to identify the

specific ~~textbook or~~ textbooks or instructional materials required and recommended for each course. The State Board of Education and the Board of Governors shall include in the policies, procedures, and guidelines adopted under subsection (6) ~~(4)~~ certain limited exceptions to this notification requirement for classes added after the notification deadline.

(6)~~(4)~~ After receiving input from students, faculty, bookstores, and publishers, the State Board of Education and the Board of Governors each shall adopt textbook and instructional materials affordability policies, procedures, and guidelines for implementation by Florida College System institutions and state universities, respectively, that further efforts to minimize the cost of textbooks and instructional materials for students attending such institutions while maintaining the quality of education and academic freedom. The policies, procedures, and guidelines shall address ~~provide for the following~~:

(a) The establishment of deadlines for an instructor or department to notify the bookstore of required and recommended textbooks and instructional materials so that the bookstore may verify availability, source lower cost options when practicable, explore alternatives with faculty when academically appropriate, and maximize the availability of used textbooks and instructional materials ~~That textbook adoptions are made with sufficient lead time to bookstores so as to confirm availability of the requested materials and, where possible, ensure maximum availability of used books~~.

(b) Confirmation by the course instructor or academic department offering the course, before the textbook or instructional materials adoption is finalized ~~That, in the~~

~~textbook adoption process~~, of the intent to use all items ordered, particularly each individual item sold as part of a bundled package~~, is confirmed by the course instructor or the academic department offering the course before the adoption is finalized~~.

(c) Determination by ~~That~~ a course instructor or the academic department offering the course ~~determines~~, before a textbook or instructional material is adopted, of the extent to which a new edition differs significantly and substantively from earlier versions and the value to the student of changing to a new edition or the extent to which an open-access textbook or instructional material is available ~~may exist and be used~~.

(d) ~~That the establishment of policies shall address~~ The availability of required and recommended textbooks and instructional materials to students otherwise unable to afford the cost, including consideration of the extent to which an open-access textbook or instructional material may be used.

(e) Participation by ~~That~~ course instructors and academic departments ~~are encouraged to participate~~ in the development, adaptation, and review of open-access textbooks and instructional materials and, in particular, open-access textbooks and instructional materials for high-demand general education courses.

(f) Consultation with school districts to identify practices that impact the cost of dual enrollment textbooks and instructional materials to school districts, including, but not limited to, the length of time that textbooks and instructional materials remain in use.

(g) Selection of textbooks and instructional materials

through cost-benefit analyses that enable students to obtain the highest-quality product at the lowest available price, by considering:

1. Purchasing digital textbooks in bulk.

2. Expanding the use of open-access textbooks and instructional materials.

3. Providing rental options for textbooks and instructional materials.

4. Increasing the availability and use of affordable digital textbooks and learning objects.

5. Developing mechanisms to assist in buying, renting, selling, and sharing textbooks and instructional materials.

6. The length of time that textbooks and instructional materials remain in use.

(7) The board of trustees of each Florida College System institution and state university shall report, by September 30 of each year, beginning in 2016, to the Chancellor of the Florida College System or the Chancellor of the State University System, as applicable, the textbook and instructional materials selection process for general education courses with a wide cost variance identified pursuant to subsection (4) and high-enrollment courses; specific initiatives of the institution designed to reduce the costs of textbooks and instructional materials; policies implemented in accordance with subsection (6); the number of courses and course sections that were not able to meet the textbook and instructional materials posting deadline for the previous academic year; and any additional information determined by the chancellors. By November 1 of each year, beginning in 2016, each chancellor shall provide a summary

of the information provided by institutions to the State Board of Education and the Board of Governors, as applicable.

Section 4. Subsection (20) is added to section 1009.23, Florida Statutes, to read:

1009.23 Florida College System institution student fees.—

(20) Each Florida College System institution shall publicly notice and notify all enrolled students of any proposal to increase tuition or fees at least 28 days before its consideration at a board of trustees meeting. The notice must:

(a) Include the date and time of the meeting at which the proposal will be considered.

(b) Specifically outline the details of existing tuition and fees, the rationale for the proposed increase, and how the funds from the proposed increase will be used.

(c) Be posted on the institution's website and issued in a press release.

Section 5. Paragraph (b) of subsection (4) of section 1009.24, Florida Statutes, is amended, and subsection (20) is added to that section, to read:

1009.24 State university student fees.—

(4)

(b) The Board of Governors~~, or the board's designee,~~ may establish tuition for graduate and professional programs~~,~~ and out-of-state fees for all programs. Except as otherwise provided in this section, the sum of tuition and out-of-state fees assessed to nonresident students must be sufficient to offset the full instructional cost of serving such students. However, adjustments to out-of-state fees or tuition for graduate programs and professional programs may not exceed 15 percent in

any year.

(20) Each state university shall publicly notice and notify all enrolled students of any proposal to increase tuition or fees at least 28 days before its consideration at a board of trustees meeting. The notice must:

(a) Include the date and time of the meeting at which the proposal will be considered.

(b) Specifically outline the details of existing tuition and fees, the rationale for the proposed increase, and how the funds from the proposed increase will be used.

(c) Be posted on the university's website and issued in a press release.

Section 6. This act shall take effect July 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 Appropriations

BILL:	CS/SB 986
INTRODUCER:	Banking and Insurance Committee and Senator Simpson
SUBJECT:	Workers' Compensation System Administration
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Favorable**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 986 amends regulatory provisions of ch. 440, F.S., the "Workers Compensation Law," which are administered by the Department of Financial Services (DFS). The bill affects provisions related to compliance and enforcement as follows:

- Creates a 25 percent penalty credit for employers who have not been previously issued a stop-work order or order of penalty assessment for non-compliance with coverage requirements if they maintain required business records and timely respond to the written DFS business records requests.
- Establishes a deadline for employers to file certain documentation to receive a penalty reduction.
- Reduces the imputed payroll multiplier related to penalty calculations from 2 times to 1.5 times the statewide average weekly wage.
- Eliminates a three-day response requirement applicable to employer held exemption documentation.

The bill eliminates fees collected by the DFS relating to new insurer registration and the Special Disability Trust Fund notices of claim and proofs of claim.

The bill revises provisions related to health care services and disputes as follows:

- Removes insurers and employers from the medical reimbursement dispute provision.
- Allows a Judge of Compensation Claims to designate an expert medical advisor of their choosing, rather than only those that are certified by the DFS.

The bill also:

- Eliminates the requirement for employers to notify the DFS by telephone or telegraph within 24 hours of any work related death and instead uses other reporting requirements.
- Eliminates the Preferred Worker Program, which has been inactive for over ten years.
- Allows employers to notify their insurers of their employee's coverage exemption, rather than requiring that a copy of the exemption be provided.

The bill has a negative annual fiscal impact of approximately $1 million in penalty revenue deposited into the Workers' Compensation Administration Trust Fund and a $1,500 negative annual fiscal impact to the Special Disability Trust Fund. Both trust funds are within the Department of Financial Services.

The effective date of the bill is October 1, 2016.

II. Present Situation:

Administration of the Workers' Compensation System in Florida

The Division of Workers' Compensation within the DFS is responsible for administering ch. 440, F.S., which includes the enforcement of coverage requirements,[1] administration of workers' compensation health care delivery system,[2] data collection,[3] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.[4]

Coverage Requirements

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.[5] Individuals who elect an exemption are not considered "employees," for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury.

Enforcement of Coverage Requirements

Stop Work Orders

If an employer fails to comply with workers' compensation coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of determining noncompliance.[6] The SWO requires the employer to cease all business operations. The SWO remains in effect until the employer secures appropriate coverage and the DFS issues an order releasing the SWO (for employers that have paid the assessed penalty); or an order of conditional release (for employers

[1] Section 440.107(3), F.S.
[2] Section 440.13, F.S.
[3] Section 440.185 and 440.593, F.S.
[4] Section 440.191, F.S.
[5] Section 440.38, F.S.
[6] Section 440.107, F.S.

that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS).

An SWO is issued for the following violations:

- Failure to obtain workers' compensation insurance;
- Material understatement or concealment of payroll;
- Material misrepresentation or concealment of employee duties to avoid paying the proper premium;
- Material concealment of information pertinent to the calculation of an experience modification factor; and
- Failure to produce business records within ten days of receipt of a written request from the DFS.[7]

Imposition of Payroll for Penalty Purposes

In addition to the SWO, employers are assessed a penalty equal to 2.0 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding two-year period or $1,000, whichever is greater.[8] The SWO remains in effect and the employer cannot conduct business until the DFS has calculated the penalty imputed based on payroll. Sometimes, an employer will not have the required payroll information or will not comply with the DFS' business records request. Section 440.107(7), F.S., provides a means for the DFS to impute the employer's payroll for penalty purposes.

The imputed payroll under the law is twice the statewide average weekly wage (SAWW)[9] for each individual that the employer failed to cover. Depending on the circumstances of a particular case, the DFS may have to impute payroll for all of the employees for the entire two-year period or the DFS may only have to impute payroll for a one or more employees for a small portion of the two-year period. It depends upon the quality and availability of the employer's records. When the DFS authority to impute payroll was added to the law in 2003,[10] as one of the deterrents to fight fraud, it was set at 1.5 times the SAWW. It was increased to 2 times the SAWW in 2014. The DFS suggests that this can lead to "exorbitant penalty amounts that do not correlate with the violation committed by the employer."[11]

Avoiding Work Stoppage and Minimizing Penalties Due to Noncompliance

There are a two ways for a non-compliant employer to mitigate the impact of a DFS finding of non-compliance on their business operations. First, if the employer comes into compliance after initiation of an investigation, but before they are ordered to stop work, an SWO is not issued. Instead, if the law requires penalties, the DFS will only levy penalties. In that case, the penalties are levied in an Order of Penalty Assessment (OPA). This permits the employer to avoid work stoppage due to an SWO, while also achieving compliance. This also provides the employer an opportunity to reduce their potential penalty. If the employer has never received an SWO before,

[7] Section 440.107(7)(d), F.S.
[8] Section 440.107(7)(d), F.S.
[9] The statewide average weekly wage is determined by the DFS pursuant to s. 440.12(2), F.S.
[10] Ch. 2003-412, s. 13, Laws of Fla.
[11] Email from the Division of Workers' Compensation, Department of Financial Services, (Jan. 6, 2016) (on file with the Senate Committee on Banking and Insurance).

the employer may receive a credit against the penalty equal to the amount of the initial payment of workers' compensation premium resulting from them achieving compliance following the initiation of the DFS investigation.[12]

DFS Compliance and Enforcement Statistics

For Fiscal Year 2014-2015, the DFS issued 2,727 SWOs with approximately $52.4 million in penalties to employers that violated the coverage requirements.[13] The DFS imputed payroll against the employer in 1,584 cases.[14] The DFS issued 256 OPAs levying about $3.1 million in penalties when an employer came into compliance with the coverage requirements prior to the issuance of an SWO. The DFS reports that they are able to collect between 25 percent and 35 percent of the penalties they assess.[15]

The DFS maintains an online database of exemption holders.[16] The DFS reports that of the 367 non-construction LLCs that received an SWO in Fiscal Year 2014-2015, 32 corrected their non-compliance because one or more LLC members obtained exemptions.[17] An additional 30 non-construction LLCs achieved compliance by purchasing coverage for four employees.

Medical Reimbursement Disputes

The DFS is responsible for resolving medical reimbursement disputes between health care providers and insurers[18] or employers.[19] Health care providers, insurers, and employers have 45 days from receipt of notice of disallowance or adjustment of payment from an insurer to file a reimbursement dispute petition with the DFS. Insurers have 30 days from receipt of the provider's petition to submit all documentation substantiating the insurer's disallowance or adjustment to the DFS; otherwise they waive all objections to the petition. The DFS has 120 days from receipt of all documentation to issue a written determination. The DFS's determination is subject to the hearing provisions of the Administrative Procedures Act.[20]

Insurers are required to report all instances of health care provider overutilization to the DFS.[21] The DFS has implemented rules formalizing the procedure for reporting alleged provider

[12] Section 440.107(7)(d)1., F.S.
[13] Florida Department of Financial Services, *Division of Workers' Compensation 2015 Results & Accomplishments Report*, at http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/AnnualReportWC2015.pdf.
[14] Department of Financial Services, Analysis of Senate Bill 986, (Jan. 6, 2016) (on file with Senate Committee on Banking and Insurance).
[15] Department of Financial Services, Analysis of Senate Bill 986, (Jan. 6, 2016) (on file with Senate Committee on Banking and Insurance).
[16] *Division of Workers' Compensation Proof of Coverage Search Page,* https://apps8.fldfs.com/proofofcoverage/Search.aspx (last visited Jan. 4, 2016). Filter search by "Exemption Holder Name" or "Exemption Holder SSN."
[17] Email from the Division of Workers' Compensation, Department of Financial Services, (Jan. 5, 2016) (on file with Senate Banking and Insurance Committee).
[18] The terms "carrier" and "insurer" are used interchangeably within the context of the workers' compensation law. In fact, the definition of "insurer" expressly includes the term "carrier." s. 440.02(38), F.S. "Carrier" means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462. s. 440.02(4), F.S. While this analysis uses the term "insurer" in this instance to maintain internal consistency, the portion of the bill described strikes the term "carrier" from statute.
[19] Section 440.13(7), F.S.
[20] Ch. 120, F.S.
[21] Section 440.13(6), F.S.

violations.[22] Any interested person can report an alleged provider violation through this procedure. Additionally, the DFS collects adjustment information for all reported workers' compensation medical bills. When the insurer properly codes and reports their adjustments and reimbursement decisions, the DFS can use their electronic database to identify alleged overutilization. Insurer compliance with electronic bill reporting requirements satisfies their statutory obligation to report all instances of overutilization.[23] The inclusion of insurers and employers in the medical reimbursement dispute provision can lead to confusion over the correct method for insurer or employer reporting of alleged provider violations and insurer reporting of medical overutilization issues.

Expert Medical Advisors and Judges of Compensation Claims

The Office of the Judges of Compensation Claims is responsible for resolving workers' compensation benefit disputes.[24] A Judge of Compensation Claims (JCC) receives medical evidence and testimony in the course of administering their assigned cases. Whenever there is a conflict in medical evidence or medical opinion, the JCC must appoint an Expert Medical Advisor (EMA) to address the conflict.[25] The EMAs are certified by the DFS.[26]

Certification as an EMA requires specialized workers' compensation training or experience and medical board certification or eligibility. The DFS is also required to "consider the qualifications, training, impartiality, and commitment of the health care provider to the provision of quality medical care at a reasonable cost."[27] Currently, there are 153 EMAs certified by the DFS.[28] The procedures that an EMA must abide by and the party responsible for the cost of the EMA's services are established by statute.[29]

The JCCs often have difficulty finding an eligible EMA to assist them with a case. This often occurs because there are too few EMAs in a particular specialty or the EMAs present in the local area of the injured worker have a conflict in participating in the matter as they have previously treated the injured worker or consulted in their care. When this occurs, the JCC identifies a willing provider with the appropriate qualifications and submits their information to the DFS for certification. Since the JCC has already considered the prospective EMA's qualifications, there is little benefit in going through the additional burden and delay of submitting the prospective EMA to the DFS for certification.

Workers' Compensation Special Disability Trust Fund

The Florida Special Disability Trust Fund (SDTF) was established to encourage the employment of workers with preexisting permanent physical impairments. The SDTF reimburses employers (or their carriers) for the excess in workers' compensation benefits provided to an employee with

[22] Chapter 69L-34, F.A.C.
[23] Rule 69L-34.002, F.A.C.
[24] Section 440.192, F.S.
[25] Section 440.25(4)(d), F.S.
[26] Section 440.13(9)(a), F.S.
[27] *Id*.
[28] FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Florida Division of Workers' Compensation Expert Medical Advisor List*, https://apps.fldfs.com/provider/ (last visited Jan. 5, 2016).
[29] Section 440.13(9), F.S.

a preexisting impairment who is subsequently injured in a workers' compensation accident. As part of the reimbursement process, the SDTF determines whether claims are eligible to receive reimbursements, as well as audits and processes reimbursement requests. Reimbursement under the SDTF is not available for injuries occurring on or after January 1, 1998. The SDTF is funded by annual assessments on insurers providing compensation insurance coverage. Claims with an accident date before 1998 are still eligible to seek reimbursements. After a claim has been accepted, a request for reimbursement of additional expenses may be submitted annually.

Currently, every Notice of Claim against the SDTF must be submitted with a $250 fee. An insurer that files a notice of claim against the SDTF must submit certain documents to substantiate their claim. If the required documents are not filed with their notice of claim, they must file a proof of claim and include a $500 fee.

Preferred Worker Program

The Preferred Worker Program (PWP) was enacted by the Legislature and became effective January 1, 1994.[30] The intent of the program was to provide financial incentives for employers to hire employees who suffered a workplace injury resulting in permanent physical disability and are unable to return to work for their previous employer. The PWP would reimburse an employer for the costs of workers' compensation insurance premium related to the preferred worker for up to three years of continuous employment. This reimbursement was to be paid from the SDTF.[31] The Department of Financial Services and the Department of Education have rulemaking authority to implement the program.

III. Effect of Proposed Changes:

Coverage Requirements

The bill removes a requirement that exemption holders revoke their exemptions by mail. This will allow electronic revocations.[32] Since the DFS maintains an online exemption application and record review system, the DFS could add online revocation requests to their system.

The bill removes the requirement that exemption applicants provide their Federal Tax Identification Number when filing an electronic application for exemption with the DFS.[33] The Internal Revenue Service does not issue Federal Tax Identification Numbers to individuals; rather, they are issued to businesses. The Federal Tax Identification Number of the applicant's employer will still be collected.

The bill changes a requirement that employers provide their insurer with copies of their employee's certificate of exemption, instead the employer will notify the insurer of the

[30] Ch.93-415, s. 43, Laws of Fla.
[31] Section 440.49(8), F.S.
[32] Section 440.05(1), (2), and (5), F.S. DFS reports that 2,314 exemption holders filed voluntary revocations in fiscal year 2014-2015. Email from the Division of Workers' Compensation, Department of Financial Services, (Jan. 6, 2016) (on file with Committee on Banking and Insurance).
[33] Section. 440.05(3), F.S.

exemptions.[34] Since the DFS maintains online exemption information, the insurer can still verify the exemption without needing a copy of the certificate of exemption.

The bill removes a requirement that construction employers maintain written exemption acknowledgements by their corporate officers that hold an exemption certificate.[35] The bill also eliminates the three-day response requirement applicable to exemption information held by the employer since the DFS maintains these records online.

Compliance and Enforcement; Penalties

The bill reduces the imputed payroll multiplier from 2.0 times the statewide average weekly wage and returns it to the pre-2014 level of 1.5 times the statewide average weekly wage.

The bill adds two new eligibility requirements to the existing penalty credit for achieving compliance after the initiation of an investigation and adds a second penalty credit. The bill requires non-compliant employers to document their purchase of coverage to the DFS within 28 days of the SWO or OPA to qualify for the reduction in penalty and requires that the employer has never before received an SWO or OPA, rather than just an SWO. The bill creates another penalty credit for non-compliant employers who have never previously received an SWO or OPA. If they maintain business records consistent with the requirements of s. 440.107(5), F.S.,[36] and timely respond to the written DFS business records requests (a ten-day response requirement), the DFS must reduce their penalty by 25 percent.

Medical Services Disputes

The bill removes insurers and employers from the provision allowing the filing of a medical reimbursement dispute over the disallowance or adjustment of a medical payment. Accordingly, only health care providers are allowed to file petitions for resolution of medical billing disputes.

The bill allows a JCC to designate an EMA of their choosing, rather than only those that are certified as EMAs by the DFS. The EMAs, whether certified by the DFS or designated by the JCC, will continue to be subject to the existing procedural requirements of statute.

Elimination of Fees

The bill eliminates the registration fee of $100 required of every new workers' compensation carrier that registers with the DFS.[37]

The bill eliminates the SDTF Notice of Claim Fee of $250 and the Proof of Claim Fee of $500 that are deposited into the Special Disability Trust Fund.

[34] *Id.*
[35] Section. 440.05(10), F.S.
[36] Section 440.107(5), F.S., requires the DFS to adopt rules specifying the business records that the employer must maintain. Rule 69L-6.015, F.A.C., contains these requirements.
[37] Section 440.52(1), F.S.

Other Provisions

The bill removes a requirement that employers notify the DFS by telephone or telegraph within 24 hours of any work related death.[38] This relates to an obsolete function when the DFS had a role in workplace safety investigations. However, the DFS' former workplace safety role is preempted to the federal Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor with some exceptions.[39] The employers not covered[40] by the OSHA include self-employed workers, immediate family members of farm employers, and workers whose hazards are regulated by another federal agency (for example, the Mine Safety and Health Administration, the Department of Energy, or Coast Guard).[41] The DFS will continue to receive reports of death through an existing employer-reporting requirement.[42]

The bill eliminates the Preferred Worker Program. The program has experienced a small number of claims and has not made any program reimbursements in over a decade. The DFS reports that the program paid seven claims totaling $15,915 since 1994. The DFS last issued a reimbursement under the program in 2002.[43]

The bill provides technical, conforming changes to revise cross-references to conform to changes made by the bill.

The bill is effective October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[38] Section 440.185(3), F.S.
[39] The OSHA requires employers subject to OSHA to report fatalities within 8 hours. Available at https://www.osha.gov/as/opa/worker/employer-responsibility.html.
[40] See https://www.osha.gov/OSHA_FAQs.html (last visited January 26, 2016).
[41] Workers at state and local government agencies are not covered by Federal OSHA, but have the OSHA protections if they work in those states that have an OSHA-approved state program.
[42] Section 440.185(2), F.S.
[43] Florida Department of Financial Services, 2016 Agency Analysis of Senate Bill 986 (Jan. 6, 2016).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 986 eliminates the new insurer registration fee of $100 and the Special Disability Trust Fund (SDTF) Notice of Claim and Proof of Claim fees of $250 and $500, respectively. The total annual fee reduction is approximately $1,500.

B. Private Sector Impact:

The bill eliminates the new insurer registration fee of $100. The DFS reports that four registrations for new workers' compensation insurers were received in Fiscal Year 2014-2015.

Insurers filing SDTF Notices of Claim or Proofs of Claim will no longer be assessed the $250 and $500 fee, respectively.

C. Government Sector Impact:

The elimination of fees will result in a decrease in collections of approximately $1,500 in the SDTF. The SDTF received no notices of claims or proofs of claims in Fiscal Year 2013-2014 and one notice of claim in Fiscal Year 2014-2015. [44] The DFS reports that four new registrations were received in Fiscal Year 2014-2015.[45]

The 25 percent reduction in penalties for employers who have not been previously issued a SWO or penalty will result in approximately $1 million less that is deposited into the Workers' Compensation Administration Trust Fund. This estimate is based on a 25 percent collection rate of the penalties. The DFS anticipates that the reduced penalty may increase the percentage actually collected which may offset the fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.021, 440.05, 440.107, 440.13, 440.185, 440.42, 440.49, 440.50, 440.52, and 624.4626.

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[44] AMI Risk Consultants, Inc., *State of Florida Special Disability Trust Fund Actuarial Review as of June 30, 2015*, at 5, *available at* http://www.myfloridacfo.com/Division/WC/pdf/State-of-Florida-Disability-Trust-Fund_2015_FINAL_09-10-15.pdf.

[45] Email from The Division of Workers' Compensation, Department of Financial Services, (Jan. 6, 2016) (on file with Senate Committee on Banking and Insurance).

IX. Additional Information:

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

CS by Banking and Insurance on February 2, 2016:
The CS reinstates current statutory coverage requirements for non-construction limited liability companies and clarifies the process for the appointment of an expert medical advisor.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Simpson

597-02874-16 2016986c1

A bill to be entitled

An act relating to workers' compensation system administration; amending s. 440.05, F.S.; deleting a required item to be listed on a notice of election to be exempt; revising specified rules regarding the maintenance of business records by an officer of a corporation; removing the requirement that the Department of Financial Services issue a specified stop-work order; amending s. 440.107, F.S.; requiring that the department allow an employer who has not previously been issued an order of penalty assessment to receive a specified credit to be applied to the penalty; prohibiting the application of a specified credit unless the employer provides specified documentation and proof of payment to the department within a specified period; requiring the department to reduce the final assessed penalty by a specified percentage for employers who have not been previously issued a stop-work order or order of penalty assessment; revising the penalty calculation for the imputed weekly payroll for an employee; amending s. 440.13, F.S.; eliminating the certification requirements when an expert medical advisor is selected by a judge of compensation claims; providing requirements for the selection of an expert medical advisor; amending s. 440.185, F.S.; deleting the requirement that employers notify the department within 24 hours of any injury resulting in death; amending s. 440.49, F.S.; revising definitions; revising the requirements for filing a claim; deleting the preferred worker program; deleting the notification fees on certain filed claims which

597-02874-16 2016986c1

supplement the Special Disability Trust Fund; conforming cross-references; amending s. 440.52, F.S.; deleting a fee for certain registration of insurance carriers; amending ss. 440.021, 440.42, 440.50, and 624.4626, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1), (2), (3), (5), (10), and (11) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(1) Each corporate officer who elects not to accept the provisions of this chapter or who, after electing such exemption, revokes that exemption shall submit ~~mail~~ to the department ~~in Tallahassee~~ notice to such effect in accordance with a form to be prescribed by the department.

(2) Each sole proprietor or partner who elects to be included in the definition of "employee" or who, after such election, revokes that election must submit ~~mail~~ to the department ~~in Tallahassee~~ notice to such effect, in accordance with a form to be prescribed by the department.

(3) ~~Each officer of a corporation who is engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption must submit a notice to such effect to the department on a form prescribed by the department.~~ The notice of election to be exempt must be electronically submitted to the department

by the officer of a corporation who is allowed to claim an exemption as provided by this chapter and must list the name, ~~federal tax identification number,~~ date of birth, driver license number or Florida identification card number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers provided in s. 440.02, and must certify that any employees of the corporation whose officer elects an exemption are covered by workers' compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of

election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. A notice ~~copy~~ of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.

(5) A notice given under subsection (1), subsection (2), or subsection (3) shall become effective when issued by the department or 30 days after it ~~an application for an exemption~~ is received by the department, whichever occurs first. However, if an accident or occupational disease occurs less than 30 days after the effective date of the insurance policy under which the payment of compensation is secured or the date the employer qualified as a self-insurer, such notice is effective as of 12:01 a.m. of the day following the date it is submitted ~~mailed~~ to the department ~~in Tallahassee~~.

(10) Each officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the department by rule~~, which rules must include the provision that any corporation with exempt officers engaged in the construction industry must maintain written statements of those exempted~~

~~persons affirmatively acknowledging each such individual's exempt status~~.

(11) Any corporate officer permitted by this chapter to claim an exemption must be listed on the records of this state's Secretary of State, Division of Corporations, as a corporate officer. ~~The department shall issue a stop-work order under s. 440.107(7) to any corporation who employs a person who claims to be exempt as a corporate officer but who fails or refuses to produce the documents required under this subsection to the department within 3 business days after the request is made.~~

Section 2. Paragraphs (d) and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year period or $1,000, whichever is greater.

a. For employers who have not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the

penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation, by a representative from the employee leasing company, of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees, and proof of payment to the employee leasing company. The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 28 days after service of the stop-work order or first order of penalty assessment upon the employer.

b. For employers who have not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 25 percent if the employer has complied with administrative rules adopted pursuant to subsection (5) and has provided such business records to the department within 10 business days after the employer's receipt of the written request to produce business records.

c. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit and 25 percent reduction have ~~has~~ been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning

of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 1.5 ~~2~~.

Section 3. Paragraph (a) of subsection (7) and paragraphs (a), (c), and (f) of subsection (9) of section 440.13, Florida Statutes, are amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

(a) Any health care provider~~, carrier, or employer~~ who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 45 days after receipt of notice of disallowance or adjustment of payment, petition the department to resolve the dispute. The petitioner must serve a copy of the petition on the carrier and on all affected parties by certified mail. The petition must be accompanied by all documents and records that support the allegations contained in the petition. Failure of a petitioner to submit such documentation to the department results in dismissal of the petition.

(9) EXPERT MEDICAL ADVISORS.—

(a) The department shall certify expert medical advisors in each specialty to assist the department ~~and the judges of~~

~~compensation claims~~ within the advisor's area of expertise as provided in this section. The department shall, in a manner prescribed by rule, in certifying, recertifying, or decertifying an expert medical advisor, consider the qualifications, training, impartiality, and commitment of the health care provider to the provision of quality medical care at a reasonable cost. As a prerequisite for certification or recertification, the department shall require, at a minimum, that an expert medical advisor have specialized workers' compensation training or experience under the workers' compensation system of this state and board certification or board eligibility.

(c) If there is disagreement in the opinions of the health care providers, if two health care providers disagree on medical evidence supporting the employee's complaints or the need for additional medical treatment, or if two health care providers disagree that the employee is able to return to work, the department may, and the judge of compensation claims shall, upon his or her own motion or within 15 days after receipt of a written request by either the injured employee, the employer, or the carrier, order the injured employee to be evaluated by an expert medical advisor. The injured employee and the employer or carrier may agree on the health care provider to serve as an expert medical advisor. If the parties do not agree, the judge of compensation claims shall select an expert medical advisor from the department's list of certified expert medical advisors. If a certified medical advisor within the relevant medical specialty is unavailable, the judge of compensation claims shall appoint any otherwise qualified health care provider to serve as

an expert medical advisor without obtaining the department's certification. The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

(f) If the department or a judge of compensation claims orders the services of an ~~a certified~~ expert medical advisor to resolve a dispute under this section, the party requesting such examination must compensate the advisor for his or her time in accordance with a schedule adopted by the department. If the employee prevails in a dispute as determined in an order by a judge of compensation claims based upon the expert medical advisor's findings, the employer or carrier shall pay for the costs of such expert medical advisor. If a judge of compensation claims, upon his or her motion, finds that an expert medical advisor is needed to resolve the dispute, the carrier must compensate the advisor for his or her time in accordance with a schedule adopted by the department. The department may assess a penalty not to exceed $500 against any carrier that fails to timely compensate an advisor in accordance with this section.

Section 4. Subsection (3) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

~~(3) In addition to the requirements of subsection (2), the employer shall notify the department within 24 hours by telephone or telegraph of any injury resulting in death. However, this special notice shall not be required when death results subsequent to the submission to the department of a previous report of the injury pursuant to subsection (2).~~

Section 5. Paragraph (b) of subsection (2), paragraph (c) of subsection (4), paragraph (c) of subsection (6), paragraphs (c) and (d) of subsection (7), subsection (8), and paragraph (d) of subsection (9) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(2) DEFINITIONS.—As used in this section, the term:

~~(b) "Preferred worker" means a worker who, because of a permanent impairment resulting from a compensable injury or occupational disease, is unable to return to the worker's regular employment.~~

In addition to the definitions contained in this subsection, the department may by rule prescribe definitions that are necessary for the effective administration of this section.

(4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY, TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER OTHER PHYSICAL IMPAIRMENT.—

(c) *Temporary compensation and medical benefits; aggravation or acceleration of preexisting condition or circumstantial causation.*—If an employee who has a preexisting permanent physical impairment experiences an aggravation or

acceleration of the preexisting permanent physical impairment as a result of an injury or occupational disease arising out of and in the course of her or his employment, or suffers an injury as a result of a merger as defined in paragraph (2)(b) ~~(2)(c)~~, the employer shall provide all benefits provided by this chapter, but, subject to the limitations specified in subsection (7), the employer shall be reimbursed by the Special Disability Trust Fund created by subsection (9) for 50 percent of its payments for temporary, medical, and attendant care benefits.

(6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

(c) An employer's or carrier's right to apportionment or deduction pursuant to ss. 440.02(1), 440.15(5)(b), and 440.151(1)(c) does not preclude reimbursement from such fund, except when the merger comes within the definition of paragraph (2)(b) ~~(2)(c)~~ and such apportionment or deduction relieves the employer or carrier from providing the materially and substantially greater permanent disability benefits otherwise contemplated in those paragraphs.

(7) REIMBURSEMENT OF EMPLOYER.—

(c) A proof of claim must be filed on each notice of claim on file as of June 30, 1997, within 1 year after July 1, 1997, or the right to reimbursement of the claim shall be barred. A notice of claim on file on or before June 30, 1997, may be withdrawn and refiled if, at the time refiled, the notice of claim remains within the limitation period specified in paragraph (a). Such refiling shall not toll, extend, or otherwise alter in any way the limitation period applicable to the withdrawn and subsequently refiled notice of claim. ~~Each proof of claim filed shall be accompanied by a proof-of-claim~~

~~fee as provided in paragraph (9)(d).~~ The Special Disability Trust Fund shall, within 120 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

(d) ~~Each notice of claim filed or refiled on or after July 1, 1997, must be accompanied by a notification fee as provided in paragraph (9)(d).~~ A proof of claim must be filed within 1 year after the date the notice of claim is filed or refiled~~,~~ ~~accompanied by a proof-of-claim fee as provided in paragraph (9)(d),~~ or the claim shall be barred. ~~The notification fee shall be waived if both the notice of claim and proof of claim are submitted together as a single filing.~~ The Special Disability Trust Fund shall, within 180 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

~~(8) PREFERRED WORKER PROGRAM.—The Department of Education or administrator shall issue identity cards to preferred workers upon request by qualified employees and the Department of Financial Services shall reimburse an employer, from the Special Disability Trust Fund, for the cost of workers' compensation premium related to the preferred workers payroll for up to 3 years of continuous employment upon satisfactory evidence of placement and issuance of payroll and classification records and upon the employee's certification of employment. The Department of Financial Services and the Department of Education may by rule prescribe definitions, forms, and procedures for the administration of the preferred worker program. The Department~~

~~of Education may by rule prescribe the schedule for submission of forms for participation in the program.~~

(8)~~(9)~~ SPECIAL DISABILITY TRUST FUND.—

~~(d) The Special Disability Trust Fund shall be supplemented by a $250 notification fee on each notice of claim filed or refiled after July 1, 1997, and a $500 fee on each proof of claim filed in accordance with subsection (7). Revenues from the fee shall be deposited into the Special Disability Trust Fund and are exempt from the deduction required by s. 215.20. The fees provided in this paragraph shall not be imposed upon any insurer which is in receivership with the department.~~

Section 6. Subsection (1) of section 440.52, Florida Statutes, is amended to read:

440.52 Registration of insurance carriers; notice of cancellation or expiration of policy; suspension or revocation of authority.—

(1) Each insurance carrier who desires to write workers' ~~such~~ compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the department ~~and pay a registration fee of $100. This shall be deposited by the department in the fund created by s. 440.50~~.

Section 7. Section 440.021, Florida Statutes, is amended to read:

440.021 Exemption of workers' compensation from chapter 120.—Workers' compensation adjudications by judges of compensation claims are exempt from chapter 120, and no judge of compensation claims shall be considered an agency or a part thereof. Communications of the result of investigations by the

department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt from chapter 120. In all instances in which the department institutes action to collect a penalty or interest which may be due pursuant to this chapter, the penalty or interest shall be assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within 20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the department shall, if it agrees with such protest, notify the protesting party that the assessment has been revoked. If the department does not agree with the protest, it shall refer the matter to the judge of compensation claims for determination pursuant to s. 440.25(2)-(5). Such action of the department is exempt from the provisions of chapter 120.

Section 8. Subsection (3) of section 440.42, Florida Statutes, is amended to read:

440.42 Insurance policies; liability.—

(3) No contract or policy of insurance issued by a carrier under this chapter shall expire or be canceled until at least 30 days have elapsed after a notice of cancellation has been sent to the department and to the employer in accordance with the provisions of s. 440.185(6) ~~s. 440.185(7)~~. For cancellation due to nonpayment of premium, the insurer shall mail notification to the employer at least 10 days prior to the effective date of the cancellation. However, when duplicate or dual coverage exists by reason of two different carriers having issued policies of insurance to the same employer securing the same liability, it shall be presumed that only that policy with the later effective

date shall be in force and that the earlier policy terminated upon the effective date of the latter. In the event that both policies carry the same effective date, one of the policies may be canceled instanter upon filing a notice of cancellation with the department and serving a copy thereof upon the employer in such manner as the department prescribes by rule. The department may by rule prescribe the content of the notice of retroactive cancellation and specify the time, place, and manner in which the notice of cancellation is to be served.

Section 9. Paragraph (b) of subsection (1) of section 440.50, Florida Statutes, is amended to read:

440.50 Workers' Compensation Administration Trust Fund.—

(1)

(b) The department is authorized to transfer as a loan an amount not in excess of $250,000 from such special fund to the Special Disability Trust Fund established by s. 440.49(8) ~~s. 440.49(9)~~, which amount shall be repaid to the ~~said~~ special fund in annual payments equal to not less than 10 percent of moneys received for the ~~such~~ Special Disability Trust Fund.

Section 10. Subsection (2) of section 624.4626, Florida Statutes, is amended to read:

624.4626 Electric cooperative self-insurance fund.—

(2) A self-insurance fund that meets the requirements of this section is subject to the assessments set forth in ss. 440.49(8) ~~ss. 440.49(9)~~, 440.51(1), and 624.4621(7), but is not subject to any other provision of s. 624.4621 and is not required to file any report with the department under s. 440.38(2)(b) which is uniquely required of group self-insurer funds qualified under s. 624.4621.

Section 11. This act shall take effect October 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 Appropriations

BILL:	PCS/CS/SB 1010 (249924)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Agriculture Committee; and Senator Montford
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Fav/CS**
2.	Blizzard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Blizzard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1010 addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- Designates tupelo honey as the official state honey.
- Changes the procedure to obtain and renew a pest control operator's certificate and eliminates a late charge.
- Changes the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminates the $50 per month late charge for late recertification.
- Adds the term "dietary supplements" to the list of possibly adulterated foods.
- Defines the term "vehicle" to provide clarity to the types of mobile carriers that fall under the department's regulatory authority.
- Adds allergen information labeling requirements to the list of possibly misbranded foods.
- Authorizes the department to sponsor "events" (not just breakfasts, luncheons, or dinners) to promote agriculture and agricultural business products.
- Authorizes the department to secure letters of patent, copyrights, and trademarks on any work products of the department and accordingly to enforce its rights.
- Authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers and duties of the Division of Agricultural Environmental Services.
- Creates an Office of Agriculture Technology Services.

- Removes the requirement for the department to provide administrative staff relating to meetings and office space for the Florida Agriculture Center and Horse Park Authority.
- Specifies the intent of the "Fresh From Florida" marketing brand.
- Amends membership requirements for the Florida Agricultural Promotional Campaign Advisory Council.
- Modifies the reporting period for fertilizer tonnage sales from monthly to quarterly and changes the reporting requirement from 15 days to 30 days following the close of the reporting period.
- Preempts regulatory authority for commercial feed and feedstuff to the department.
- Removes the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. This change provides the department with the flexibility to not have to require an owner to destroy or remove the plant.
- Creates the Grove Removal or Vector Elimination Program.
- Rewrites ch. 582, F.S., to modernize the Soil and Water Conservation Districts' (SWCDs) statutes to reflect the actual functions of the districts.
- Removes obsolete statutory references relating to Watershed Improvement Districts.
- Adds definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are programs which are authorized by federal law.
- Authorizes the department to implement the Farmers' Market Nutrition Program to provide participants in the Supplemental Nutrition Program for Women, Infants, and Children with locally grown fruits and vegetables.
- Eliminates a federal licensing requirement for certain citrus fruit inspectors.
- Requires the department to provide the highest rate of reimbursement to which it is entitled under the federal school breakfast program to a "severe need school".
- Renames the "Florida Farm Fresh Schools Program" to be the "Florida Farm to School Program."
- Eliminates the requirement that each grain dealer report monthly to the department the value of grain it received from producers for which the producers have not received payment; and
- Eliminates the Florida Forest Service's power to dedicate its land for use by the public as a park.

The bill has an insignificant impact on state revenues (see Section V. Fiscal Impact Statement); however, the bill will have a significant impact on state expenditures relating to the creation of the Grove Removal or Vector Elimination Program created in section 21.

II. Present Situation:

This section topically describes the present situation and the bill's impact on each. See Section III., for a section-by section analysis of the bill's provisions.

Tupelo Honey

The Legislature has not designated an official state honey. Pure Tupelo honey is commercially produced in only three river valleys in the world – the Ogeechee, the Apalachicola, and the Chattahoochee River Basins, which are all located in northwest Florida and Southeast Georgia. The bill designates tupelo honey as the official state honey.

Pest Control Operator's Certification Application Fee

Each location of each licensed pest control business must have a certified operator in charge that is registered with the Department of Agriculture and Consumer Services (department).[1] This person must be certified for the particular category of pest control engaged in at that location and may be in charge of one or more categories if they are certified in those categories.[2] To become a certified operator, an individual must pass an examination and satisfy specified education and experience requirements.[3]

Currently, persons seeking this certification pay $300 to take the exam.[4] After the individual has passed the exam, he or she must then receive an original certificate before engaging in pest control work.[5] To obtain the original certificate, the individual must pay an additional $150 issuance fee.[6] These requirements cause the department to process an additional, repetitive application and to collect an additional fee. Improvements in on-line processing capability have eliminated the need for this process and can improve the speed with which applicants can obtain their certificate. According to the department, while there will be a negative fiscal impact, there will also be decreased costs and administrative burdens for processing the application for initial certification.

Limited Certification for Urban Landscape Commercial Fertilizer Application

Section 482.1562, F.S., outlines the application requirements to receive a limited urban landscape commercial fertilizer certificate. Renewals are required every four years. For those who hold a limited license, recertification applications must be submitted 90-days prior to expiration of the current license. If the renewal application is not received 60 days prior to the expiration date, a late fee of $50 is assessed in addition to the $25 renewal fee. In order to renew a limited commercial fertilizer certificate, the cost may be as much as $75. A new license is $25. The bill removes the late fee and allows certificate holders 30 days to renew their licenses. This process is consistent with other certifications under ch. 482, F.S.

Florida Food Safety Act

The Florida Food Safety Act is intended to:

[1] Section 482.111(6)(a), F.S.
[2] Id.
[3] Section 482.132, F.S.
[4] Section 482.141, F.S.; Rule 5E-14.123(4), F.A.C.
[5] Section 482.111, F.S.
[6] Id.; Rule 5E-14.132(3), F.A.C.

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.[7]

The bill proposes adoption by reference of federal law (21 USC 321) which details information about dietary supplements or ingredients. The changes proposed add dietary supplements to the list of foods that could possibly be adulterated. Additionally, the bill sets forth criteria to determine if the supplement is adulterated. Dietary supplements have historically been regulated as a food item and are defined as such in federal law. The expansive growth of such products in the last decade, combined with a lack of understanding by many consumers and producers that supplements and supplement ingredients are food products, has created considerable confusion in the regulation of such products. The department is seeking to clarify its ongoing regulation of these products through definition of the product and inclusion of dietary supplements.

The department currently has authority to inspect vehicles which transport food products. However, the various modes of transportation are not clearly identified. Adding the term "vehicle" to the list of definitions will provide clarity around the types of mobile carriers that fall under the department's regulatory authority.

The department's federal partners recognize allergens as a critical food safety issue and have created regulations for such. Section 500.11, F.S., defines what constitutes misbranded food; however, the language is incomplete and/or inconsistent with federal law in 21 U.S.C. 343. The department recommends adoption by reference of federal law, 21 U.S.C. 343 (w) (1) (a) and (b), which includes labeling requirements for allergen information. Such requirements will better protect consumers by requiring appropriate labeling of foods containing known allergens.

Powers and Organization of the Department of Agriculture and Consumer Services

The Legislature has granted the department authority to regulate and promote Florida agriculture, protect the environment, safeguard consumers, and ensure the safety of food. The department has 13 divisions and five offices that establish rules for the state's animal, aquaculture, forestry and produce industries, license producers, the state's agribusiness marketing needs, oversight of emergency preparedness, and law enforcement efforts covering the agriculture industry. In addition to its agricultural duties, the department regulates various consumer service businesses, including motor vehicle repair shops, charitable organizations, dance studios, pawnshops, telemarketers, and several others. The bill repeals certain department authority and duties that are obsolete and updates others to allow the department to more effectively carry out its duties.

Pest Control Trust Fund

Section 482.2401, F.S., requires all moneys collected or received by the department under chapter 482, F.S., to be deposited into the Pest Control Trust Fund. The department indicates that current language restricts the use of funds to carry out the provisions of ch. 482, F.S., because it

[7] Section 500.02, F.S.

prevents resources funded in ch. 482, F.S., from being used to conduct work for other programs. This is problematic when functions across programs are combined within a work unit, such as licensing or inspections. Prior to the reorganization of the Division of Agriculture Environmental Services (AES), the work units were separate for each statutory area. The re-organization streamlined these units. The bill authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the responsibilities of the Division of Agricultural Environmental Services (set forth in s. 570.44, F.S.), not just the Structural Pest Control Act (ch. 482, F.S.). The authority of the Division of Agricultural and Environmental Services includes state mosquito control program coordination, agricultural pesticide registration, testing and regulation, and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2019.

Office of Agriculture Technology Services

Currently, the Division of Administration is responsible for "providing electronic data processing and management information systems support for the department." The bill would create an Office of Agriculture Technology Services as a stand-alone office under the supervision of a senior manager within ch. 570, F.S. This change paves the way for continued implementation of the department's information technology strategic plan.

Florida Agriculture Center and Horse Park

In 1994, the Florida Legislature created the Florida Agriculture Center and Horse Park (Florida Horse Park) in order to provide a unique tourist experience for visitors and Florida residents.[8] The Florida Horse Park is situated on 500 acres that are located south of Ocala. Numerous events occur at the Florida Horse Park throughout the year including rodeos, dressage, polo, obstacle challenges, dog shows, and trail rides.[9] The Florida Agriculture Center and Horse Park Authority (Authority), a twenty-one member group appointed by the Commissioner of Agriculture, oversees the management of the park.[10] The department is currently required to provide administrative and staff support services for the meetings of the Authority and provide suitable space in the offices of the department for Authority's meetings and storage of the Authority's records.[11] The bill revises these requirements so that the department may provide them, but is not required to do so.

Florida Agricultural Promotion Campaign

The department is authorized to establish and coordinate the Florida Agricultural Promotional Campaign (FAPC), also known as the "Fresh From Florida" campaign.[12] This campaign is intended to increase consumer awareness and to expand the market for Florida's agricultural products.[13] Florida agricultural producers may voluntarily join the FAPC. FAPC members may

[8] Section 570.681, F.S.
[9] Florida Agricultural Center and Horse Park Authority, *Welcome to the Florida Horse Park*, http://flhorsepark.com/ (last visited December 21, 2015).
[10] Section 570.685, F.S.
[11] Section 570.685(4)(b), F.S.
[12] Section 571.24, F.S.
[13] Section 571.22, F.S.

use the "Fresh From Florida" logos, participate in industry trade shows at a reduced cost, receive point-of-purchase materials, have access to trade leads, and receive the "Fresh From Florida" magazine and industry newsletter. Additionally, members of the FAPC can tie into supermarket promotions that feature Florida products in newspaper and store circular advertisements, and receive a farm sign customized with the member's business name.[14] The bill would clarify the intent of the marketing brand to avoid misconception that the brand is indicative of inspection for food safety purposes and to decrease the possibility of liability to the department. It makes clear that the department is not warranting safety of products by use of the brand. These changes will clarify intent that the FAPC is only providing a marketing program aimed at promoting department brands, including the "Fresh From Florida" program.

Commercial Feed and Feedstuff

"Commercial feed" is all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans.[15] "Feedstuff" is edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.[16] The department has indicated that it, as well as local governments, if they are inclined to, are authorized to regulate commercial feed and feedstuff for quality, safety, labeling requirements, and standards. At present, there is no regulation of animal feed and feedstuff through local ordinances. The federal Food and Drug Administration is currently promulgating rules which would bring the manufacture and distribution of commercial livestock feed and ingredients to a standard of sanitation safe for both human handling and animal consumption through the Food Safety Modernization Act. The bill would clarify the department's preemptive authority to regulate, inspect, sample, and analyze any commercial feed and feedstuff to eliminate potential duplication of regulation.

Removal and Destruction of Infected and Infested Plants

The Division of Plant Industry must order the removal and destruction of any plant or plant product infested or infected with plant pests or noxious weeds.[17] The division may take this action in order to stop the introduction and dissemination of plants or pests that may threaten Florida's agriculture industry. The division provides written notice to the owner or the person in charge of the premises when the department finds an infested or infected plant or plant product. Within ten days of the notice, the owner or person in charge must treat as directed or remove and destroy the infested or infected plant or plant product. If the owner or person in charge does not, the department may treat as directed or remove and destroy the infested or infected plant or plant product.[18] The bill would create an exception from the destruction requirement for plant or plant products infested with pests or noxious weeds that are widely established in Florida and not regulated. According to the department, there are times when noxious plants, plant pests, or plant

[14] Florida Department of Agriculture and Consumer Services, *Join "Fresh From Florida,"* http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Join-Fresh-From-Florida (last visited December 21, 2015).
[15] Section 580.031(2), F.S.
[16] Section 580.031(10), F.S.
[17] Section 581.181(1), F.S.
[18] Section 581.181(2), F.S.

diseases are well established in Florida and are not under a department eradication or control program. The bill provides the department with flexibility if the situation does not justify action to eliminate or otherwise mitigate the plant pest or noxious weed.

Citrus Greening

Huanglongbing, citrus greening, is thought to be caused by the bacterium, *Candidatus* Liberibacter asiaticus. Citrus greening has seriously affected citrus production in a number of countries in Asia, Africa, the Indian subcontinent and the Arabian Peninsula, and was discovered in July 2004 in Brazil. Wherever the disease has appeared, citrus production has been compromised with the loss of millions of trees. In August 2005, the disease was found in the south Florida region of Homestead and Florida City. Since that time, citrus greening has been found in commercial and residential sites in all counties with commercial citrus.[19] In these areas, citrus crops have been seriously threatened or even completely destroyed. Primary disease symptoms include leaf yellowing or blotchy mottling of leaves; lopsided and bitter fruit; fruit that remains green even when ripe; twig dieback; and stunted, sparsely foliated trees that may bloom off season.[20] When dying groves and unmaintained properties are abandoned by property owners who have not removed the diseased trees, the properties become breeding grounds for citrus greening to spread to neighboring healthy groves. The bill creates the Grove Removal or Vector Elimination Program for the removal or destruction of abandoned citrus groves in order to eliminate the material harboring the citrus greening and spread of the disease.

Soil and Water Conservation Districts

Faced with the problems of the Dust Bowl in the 1930's, President Franklin D. Roosevelt signed the Soil Conservation Act of 1935, which authorized the Secretary of Agriculture to make payments and grants of aid to support approved soil and water conservation measures. The Soil Conservation Service addressed the challenge by setting up a number of large-scale demonstration projects around the country. Although these projects were successful, this approach was not far-reaching enough. It was not only costly and slow to achieve the desired results, but it lacked grass-roots support and participation and did not provide long-lasting conservation treatment. It was recognized that a local organization was necessary through which conservation could be accomplished. In 1937, a model Soil Conservation District Law was developed for consideration by each of the states. Along with a letter from President Roosevelt, this model enabling act was sent to each of the state governors, suggesting that farmers and ranchers be granted the authority to establish districts specifically for conservation of soil and water resources.[21]

Florida adopted much of the model law in 1937.[22] The Legislature recognized farms, forests, and grazing lands as among Florida's basic assets in need of protection from improper land use

[19] *See* http://www.crec.ifas.ufl.edu/extension/greening/index.shtml, (last visited January 11, 2012).
[20] *See* http://www.hungrypests.com/faqs/citrus-greening.php, (last visited January 11, 2012).
[21] *United States Department of Agriculture*, http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/rca/?cid=nrcs143_014208 (last visited December 21, 2015).
[22] Chapter 18144, 1937, Laws of Florida.

techniques that cause erosion.[23] It found that erosion reduced the productivity of land, harmed water resources, injured wildlife, caused flooding, and destroyed infrastructure.[24] Thus, corrective measures were required to prevent erosion and conserve, develop, and utilize soil and water resources.[25] The Legislature intended for soil and water conservation districts (SWCDs) to control and prevent soil erosion, prevent floodwater and sediment damage, further conservation, development, and utilization of soil and water resources, preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of Florida.[26] Currently there are 58 SWCDs in Florida. The bill amends ch. 582, F.S., to eliminate obsolete powers and duties relating to the soil and water conservation districts that are obsolete or exercised by other arms of government.

School Nutrition Program

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946.[27] In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs. Chapter 595, F.S., authorizes the department to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.[28]

Schools must apply through the department and complete certain requirements prior to the operation of a school nutrition program.[29] Once approved, the department reimburses the schools for each lunch and breakfast meal served, provided they meet established state and federal regulations. Chapter 595, F.S., does not contain definitions for "school breakfast program," "summer nutrition program," or "universal school breakfast program." The bill adds these definitions to clarify the meaning and usage of these terms both in statute and in rule and to specify that they are the programs authorized by federal law. The department administers more than one United States Department of Agriculture summer nutrition program. The bill amends the definition of "summer nutrition programs" to specify that certain requirements apply to all summer nutrition programs.

Currently, the department must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. The bill clarifies that the department does not just make efforts to, but actually ensures through its processes and

[23] Section 582.02, F.S.
[24] Section 582.03, F.S.
[25] Section 582.04, F.S.
[26] Section 582.05, F.S.
[27] *See* http://www.fns.usda.gov/nslp/national-school-lunch-program-nslp
[28] Section 595.403, F.S.
[29] Requirements found in s. 595.405, F.S.

procedures, that all eligible severe need schools receive the higher rate of reimbursement. This change will have no economic or substantive effect on any interest groups or stakeholders and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law. Further, the department may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program. There is no restriction on when or for which program the funds may be advanced. The bill also clarifies that the department will only advance funds when requested by sponsors of the Summer Food Service Program.

Florida Farm to Schools Program

Section 595.406, F.S., provides for implementation of the Florida Farm Fresh Schools Program. The program was instituted in 2010 to require the Florida Department of Education to work with the department to increase the presence of Florida-grown products in schools. When the administration of the school nutrition programs was transferred to the department, this program became part of the Florida Farm to School Program, which was already being administered by the department. The bill replaces all references to the "Florida Farm Fresh Schools Program" with the "Florida Farm to School Program." This allows for consistent messaging and marketing around the department's efforts as stated in the statute. Further changes will allow the department to recognize those school districts who have purchased ten percent of the food they serve under the Florida Farm to School Program.

Children's Summer Nutrition Program

Section 595.407, F.S., requires all school districts to develop a plan to sponsor a summer nutrition program to operate within five miles of at least one elementary school where 50 percent or more of the students are eligible for free or reduced prices meals for 35 consecutive days, and also within 10 miles of each elementary school where 50 percent or more of the students are eligible for free or reduced-price meals. The bill specifies that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades K-5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to the department, interpretation of this statute has varied greatly. This change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate. The bill removes the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. This allows school districts to exclude holidays and weekends.

Food and Nutrition Services Trust Fund

The Food and Nutrition Services Trust Fund was created for deposit of revenue and disbursements of Federal Food and Nutrition funds received by the department. In s. 595.601, F.S., the authorizing statute for this trust fund is incorrectly cited. Because the Child Nutrition Programs and Food Distribution Programs were housed in separate agencies, federal funding for these programs is currently maintained separately in the Food and Nutrition Services Trust Fund

and the Federal Grants Trust Fund. Correcting this reference in s. 595.601, F.S., will direct all future allocations of federal funding into the Food and Nutrition Services Trust Fund and create better efficiency.

State Test House for Citrus Inspectors

The state test house for citrus inspectors is staffed by the Division of Fruit and Vegetables (DFV) employees within the department. The DFV inspectors certify wholesomeness and maturity of fruit received at citrus processing plants and determine juice content and pounds solids contained in each box of fruit, pursuant to ch. 601, F.S. Currently, the DFV inspectors are licensed by the United States Department of Agriculture (USDA), as required by s. 601.31, F.S. The USDA license does not convey regulatory authority. Regulatory functions are carried out under the authority of the department. [30]

Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

Currently, any agricultural dealer who is engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative is required to obtain a bond or certificate of deposit (CD), as required in s. 604.20(1) F.S. If a CD is the chosen form of security, the dealer is required to furnish the department the CD or a CD receipt, a bank's acknowledgement letter, and an assignment of CD. The bill eliminates the need to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. This requirement is unnecessary because issuance of the certificate of deposit is acknowledgement that the agreement has been properly recorded.

Each grain dealer must report to the department monthly the value of grain it received from producers for which the producers have not received payment. This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers. The bill eliminates the requirement that each grain dealer report monthly to the department, as only three of the four licensed dealers are required to do so. The dealers will continue to be licensed and bonded which allows the department to request information from dealers in the event of a complaint or suspected malpractice.

III. Effect of Proposed Changes:

Section 1 creates s. 15.0521, F.S., to designate tupelo honey as the official state honey.

Section 2 amends s. 482.111, F.S., to eliminate the initial certification fee and associated application deadlines for pest control operator applicants.

Section 3 amends s. 482.1562, F.S., to provide renewal clarification for limited certification for urban landscape commercial fertilizer application and to remove a $50 per month late fee. Application for recertification must be submitted four years after the date of issuance.

[30] Analysis by the Department of Agriculture and Consumer Services for SB 1010, p.16 (December 11, 2015).

Section 4 amends s. 500.03, F.S., to revise the definition of the term "food" to include dietary supplements. It also adds a definition for the term "vehicle" in order to recognize the various modes of transportation used by service food establishments and to be consistent with the federal rules implementing the Food Safety Modernization Act. Currently, the Florida Food Safety Act does not define the term.

Section 5 amends s. 500.10, F.S., to include foods transported under certain conditions to be adulterated. The change also adds dietary supplements in the list of foods that could possibly be adulterated and sets forth criterial to determine if it is adulterated.

Section 6 amends s. 500.11, F.S., to adopt by reference federal law which includes labeling requirements for allergen information.

Section 7 amends s. 570.07, F.S., to authorize the Department of Agriculture and Consumer Services (department) to sponsor "events," in addition to trade breakfasts, luncheons, and dinners to promote agriculture and agricultural business products. It also authorizes the department to secure letters of patent, copyrights, and trademarks on any work product of the department and accordingly to enforce its rights.

Section 8 amends s. 570.30, F.S., to remove electronic data processing and management information systems support as a duty for the department's Division of Administration.

Section 9 amends s. 570.441, F.S., to authorize the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers and duties of the Division of Agricultural Environmental Services. This subsection expires June 30, 2019.

Section 10 amends s. 570.53, F.S., to remove duties associated with issuing Agriculture Dealer's Licenses from the duties of the Division of Marketing and Development.

Section 11 amends s. 570.544, F.S., to move issuance of Agriculture Dealer's Licenses from the Division of Marketing and Development to the Division of Consumer Services, which already issues several other licenses. It also requires the department, rather than a specific division, to regulate Live Stock Markets.

Section 12 creates s. 570.68, F.S., to create the Office of Agriculture Technology Services to provide electronic data processing and agency information technology services to the department.

Section 13 amends s. 570.681, F.S., to clarify legislative findings with regard to the Florida Agriculture Center and Horse Park.

Section 14 amends s. 570.685, F.S., to authorize the department to provide staff, meeting space and records storage space for the Florida Agriculture Center and Horse Park Authority.

Section 15 amends s. 571.24, F.S., to clarify the intent of the Florida Agricultural Promotional Campaign as a marketing program. It removes an obsolete provision relating to the designation

of a Division of Marketing and Development employee as a member of the Advertising Interagency Coordinating Council.

Section 16 amends s. 571.27, F.S., to remove obsolete provisions relating to the department's authority to adopt rules related to negotiating and entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign.

Section 17 amends s. 571.28, F.S., to change the membership criteria for the Florida Agricultural Promotional Campaign Advisory Council. This change would allow members to be selected without regard for a specific number from each category of business, but rather an overall representation of the major business components important to the business of agriculture.

Section 18 amends s. 576.041, F.S., to change fertilizer reporting requirements. This would take advantage of the department's web-based reporting tool and align Florida's tonnage reporting requirement with other states, where reporting is quarterly. In addition, the grace period in which reports must be submitted after the reporting period would be extended from 15 to 30 days. By moving the reporting period from monthly to quarterly, the potential for licensees to incur penalties for late reporting will decrease and compliance will increase. Reducing the reporting requirement by 66 percent per year will improve customer service, allow staff to be proactive during the four reporting months, and afford them the time to follow up with licensees to ensure compliance with mandated reporting requirements.

Section 19 creates s. 580.0365, F.S., to preempt the regulatory authority for commercial feed and feedstuff to the department in order to eliminate duplication of regulation.

Section 20 amends s. 581.181, F.S., to eliminate the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. With this change, the owner will not be required to destroy or remove the plant within ten days.

Section 21 creates s. 581.189, F.S., to create the Grove Removal or Vector Elimination Program, which is a cost-sharing program for the removal or destruction of abandoned citrus groves to eliminate the material harboring the citrus greening and the vectors that spread the disease. It provides definitions for "abandoned citrus grove," "applicant," "eligible costs," "funded application," and "program." This section authorizes the department to adopt rules for reviewing and ranking applications for cost-share funding and establishes the maximum that an applicant may be awarded in any given fiscal year. It specifies the application process and authorizes the department to deny an application if the applicant has not complied with this section or department rules. Applicants selected for funding must initiate and complete the removal of identified citrus trees in the timeframe specified by department rule or the cost-share funding will be forfeited. The annual awarding of funding through the program is subject to specific legislative appropriations.

Section 22 amends s. 582.01, F.S., to redefine terms relating to soil and water conservation. It eliminates the definition of "administrative officer."

Section 23 amends s. 582.02, F.S., to revise legislative intent concerning soil and water conservation districts (SWCDs). This section emphasizes that the purpose of SWCDs is to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, and protect public lands. It is also to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.

Section 24 amends s. 582.055, F.S., to update the powers and duties of the department in relation to SWCDs to reflect its current practices. This section ensures that the department is authorized to work with SWCDs to receive state and federal assistance. It grants the department the power to create and dissolve SWCDs and to adopt rules to implement this chapter.

Section 25 amends s. 582.06, F.S., to grant the Soil and Water Conservation Council the authority to review requests to create or dissolve a SWCD. It also authorizes the council to consider and provide a recommendation, at the request of the Governor or a district, as to whether a SWCD supervisor should be removed because of neglect of duty or malfeasance in office.

Section 26 amends s. 582.16, F.S., to revise the procedure used in changing district boundaries so that it is the same as when forming a district.

Section 27 amends s. 582.20, F.S., to modernize language relating to SWCDs and their supervisors. The changes focus more on water and best management practices, and less on erosion, to align with the current practices and missions of the districts. Further changes clarify that districts are authorized to partner with other entities on projects regarding floodwater control or soil and water resources. The bill would also allow a supervisor to ask the Governor to remove a fellow supervisor for neglect of duty.

Section 28 amends s. 582.29, F.S., to revise the terms under which state agencies charged with maintenance and administration of state lands must cooperate with the supervisors of any county-owned or publicly owned lands in the implementation of programs and operations under this chapter.

Section 29 amends s. 595.402, F.S., to add definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that these programs are authorized by federal law.

Section 30 amends s. 595.404, F.S., to authorize the department to implement the Farmers' Market Nutrition Program which would provide participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)[31] with locally grown fruits and vegetables. The program is to be carried out using federal or state funds or funds from any other source. The bill authorizes the department to adopt rules to administer, operate, and enforce the program.

[31] WIC provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk http://www.fns.usda.gov/wic/women-infants-amd-childen-wic (last visited December 14, 2015).

The bill clarifies requirements for the School Nutrition Program. It creates a duty for each school district to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. It specifies that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. This is consistent with the federal requirement in 7 CFR 225.9. This change will have no economic or substantive effect on any interest groups or stakeholders and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law. The bill requires the department to collect and annually publish data from multiple sources on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs. The bill also authorizes the department to enter into agreements with federal or state agencies to coordinate or cooperate in the implementation of nutrition programs.

Section 31 amends s. 595.405, F.S., to replace every instance of the term "school district" with "district school board." It rewrites the provisions of this section, which specifies that each district school board is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. The bill also provides criteria for when a universal school breakfast program must be provided. The reorganizing of the section combines several subsections and removes conflicting and duplicative clauses, so that the section is easier to read, interpret, and apply.

Section 32 amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program." The bill authorizes the department to recognize school districts who purchase at least ten percent of the food they serve from the Florida Farm to School Program.

Section 33 amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades kindergarten through five, not just elementary schools. The bill removes the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends.

Section 34 amends s. 595.408, F.S., to change every instance of the word "commodity" with the word "food" to be consistent with the federal USDA Foods Program.

Section 35 amends s. 595.501, F.S., to remove requirements for corrective action plans from s. 595.405, F.S, and place them within this section. It would require sponsors to complete corrective action plans, required by the department or a federal agency, so that they are in compliance with school food and nutrition service programs. The bill also removes "school district" from the phrase "any person, sponsor, or school district" because the definition of "sponsor" is inclusive of "school districts."[32]

[32] Section 595.402(5), F.S.

Section 36 amends s. 595.601, F.S., to correct a cross-reference.

Section 37 amends s. 601.31, F.S., to require that certain citrus inspectors be licensed by the department rather than the United States Department of Agriculture.

Section 38 amends s. 604.21, F.S., to eliminate the requirement that a complainant against an agricultural dealer must file three notarized complaint affidavits with the department. The bill also eliminates the requirement to file an original complaint with the department if the complaint has been submitted electronically.

Section 39 amends s. 604.33, F.S., to remove provisions requiring grain dealers to submit monthly reports. The bill authorizes rather than requires the department to make at least one spot check annually of each grain dealer.

Section 40 repeals s. 582.03, F.S., relating to the consequences of soil erosion.

Section 41 repeals s. 582.04, F.S., relating to appropriate corrective measures for soil conservation.

Section 42 repeals s. 582.05, F.S., relating to legislative policy for soil and water conservation.

Section 43 repeals s. 582.08, F.S., relating to additional powers of the department in relation to SWCDs.

Section 44 repeals s. 582.09, F.S., relating to the employment of an administrative officer of soil and water conservation as well as supporting staff.

Section 45 repeals s. 582.17, F.S., relating to the establishment of SWCDs.

Section 46 repeals s. 582.21, F.S., relating to adoption of land use regulations of SWCDs.

Section 47 repeals s. 582.22, F.S., relating to SWCD regulations and the uniformity of their content within a district.

Section 48 repeals s. 582.23, F.S., relating to the duties of supervisors under SWCD regulations.

Section 49 repeals s. 582.24, F.S., relating to boards of adjustment for SWCDs which requires supervisors of any district to hear and consider petitions made by landowners for relief of land use regulations.

Section 50 repeals s. 582.25, F.S., relating to rule adoption and procedures of boards of adjustment.

Section 51 repeals s. 582.26, F.S., relating to petitions made to a board to vary from SWCD regulations.

Section 52 repeals s. 582.331, F.S., relating to the authorization to establish watershed improvement districts within SWCDs.

Section 53 repeals s. 582.34, F.S., relating to petitions for establishment of watershed improvement districts.

Section 54 repeals s. 582.35, F.S., relating to requirements of supervisors when a petition has been filed that include giving notice, conducting hearings on the petition, determinations of need for watershed improvement districts, and definition of boundaries.

Section 55 repeals s. 582.36, F.S., relating to the determination by supervisors that a proposed watershed improvement district is feasible and the referendum that must be held to consider the question of whether the operation of the proposed district is administratively practicable and feasible.

Section 56 repeals s. 582.37, F.S., relating to consideration of results of referendums on establishing watershed improvement districts and to declarations of the approved organization of a district.

Section 57 repeals s. 582.38, F.S., relating to organization of watershed improvement districts, certification to clerks of circuits courts, and limitations on tax rates.

Section 58 repeals s. 582.39, F.S., relating to the establishment of watershed improvement districts that are situated in more than one SWCD.

Section 59 repeals s. 582.40, F.S., relating to changes of district boundaries, additions, detachments, transfers of land from one district to another, and the change of district names.

Section 60 repeals s. 582.41, F.S., relating to the boards of directors of watershed improvement districts.

Section 61 repeals s. 582.42, F.S., relating to officers, agents, and employees that are retained by boards of supervisors of watershed improvement districts. This section of the Florida Statutes also provides for surety bonds for such officers, agents, and employees and requires an annual audit of the accounts of the district.

Section 62 repeals s. 582.43, F.S., relating to the status and general powers of watershed improvement districts.

Section 63 repeals s. 582.44, F.S., relating to watershed improvement districts levying taxes.

Section 64 repeals s. 582.45, F.S., relating to the fiscal powers of a watershed improvement district's governing board.

Section 65 repeals s. 582.46, F.S., relating to additional powers and authorities of watershed improvement districts. Such powers are additional to those of the soil and water conservation district in which the watershed improvement district is situated.

Section 66 repeals s. 582.47, F.S., relating to the requirement that a watershed improvement district must consult with and advise flood control districts to coordinate the work of the districts involved.

Section 67 repeals s. 582.48, F.S., relating to the discontinuance of a watershed improvement district.

Section 68 repeals s. 582.49, F.S., relating to the discontinuance of a soil and water conservation district.

Section 69 repeals s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate its land for use by the public as a park.

Section 70 provides that except as otherwise expressly provided in the bill, the bill takes effect July 1, 2016.

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:

See Private Sector Impact section below.

B. Private Sector Impact:

PCS/CS/SB 1010 eliminates the $50 late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on persons who apply commercial fertilizer by eliminating this fee.

The bill eliminates certain financial assurance and licensing requirements for dealers in agricultural products and for grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

The bill also creates an exemption from the destruction requirement for plant or plant products infested with pests or noxious weeds that are widely established in Florida and not regulated by the department. This may have a positive impact on those who own the plant or plant products infested with pests or noxious weeds by not requiring the owners to destroy them.

In addition, the bill eliminates the necessity for a complainant to submit three notarized complaint affidavits when an individual is damaged by an agricultural products dealer. This may have a positive impact on those individuals by eliminating the extra filings and speeding up the complaint process.

C. Government Sector Impact:

Pest Control Operator's Certification Application Fee

The bill appears to have an insignificant negative fiscal impact on state funds because of the elimination of the original certification fee of $150 for pest control certification applicants. The Department of Agriculture and Consumer Services (department) will have decreased revenues in the Pest Control Trust Fund of $76,762 annually. The department has indicated that the impact is expected to be minimal and will be absorbed by the department.[33]

Fee for Limited Certification for Urban Landscape Commercial Fertilizer Application

Eliminating the $50 late fee for a limited certification for urban landscape commercial fertilizer application will have an insignificant negative impact on state government revenues. The fee was first established in ch. 2009-199, Laws of Florida. Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape is required to be certified. The certification is for four years from the date of issuance; therefore, no late fees have been assessed.

Office of Agricultural Technology Services

The bill has an insignificant impact associated with the creation of s. 570.68, F.S., which creates the Office of Agricultural Technology Services, under the supervision of a senior management class employee. Changing the department's current Chief Information Officer from the Regular Class in the Florida Retirement System to the Senior Management Class would result in an additional state retirement contribution of $12,402 from the General Revenue Fund. The department will manage the additional costs within existing salary and benefit resources.

Grove Removal or Vector Elimination (GROVE) Program

Under the provisions of PCS/CS/SB 1010, funding of the Grove Removal or Vector Elimination (GROVE) program is subject to specific legislative appropriation. The

[33] Analysis by the Department of Agriculture and Consumer Services for SB 1010, p.19 (December 16, 2015).

department's Fiscal Year 2016-2017 legislative budget request includes $1,000,000 in nonrecurring general revenue to fund the GROVE program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 482.111, 482.1562, 500.03, 500.10, 500.11, 570.07, 570.30, 570.441, 570.53, 570.544, 570.681, 570.685, 571.24, 571.27, 571.28, 576.041, 581.181, 582.01, 582.02, 582.055, 582.06, 582.16, 582.20, 582.29, 595.402, 595.404, 595.405, 595.406, 595.407, 595.408, 595.501, 595.601, 601.31, 604.21, and 604.33.

This bill creates the following sections of the Florida Statutes: 15.0521, 570.68, 580.0365, and 581.189.

This bill repeals the following sections of the Florida Statutes: 582.03, 582.04, 582.05, 582.08, 582.09, 582.17, 582.21, 582.22, 582.23, 582.24, 582.25, 582.26, 582.331, 582.34, 582.35, 582.36, 582.37, 582.38, 582.39, 582.40, 582.41, 582.42, 582.43, 582.44, 582.45, 582.46, 582.47, 582.48, 582.49, and 589.26.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on January 21, 2016:
The committee substitute authorizes the Department of Agriculture and Consumer Services to license certain citrus inspectors rather than the United States Department of Agriculture.

CS by Agriculture on January 11, 2016:
The committee substitute:

- Restores current statute and removes language in the bill that changes the definition of "due notice" with regard to public hearings by soil and water conservation districts. It eliminates the requirement that notification must be published in a newspaper of general circulation seven days in advance of an event.
- Creates the Grove Removal or Vector Elimination Program to help eliminate citrus greening and improve the health of Florida's citrus industry.

B. Amendments:

None.

835292

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 342 and 343
insert:

Section 7. Section 500.90, Florida Statutes, is created to read:

500.90 Regulation of polystyrene products preempted to department.—The regulation of the use or sale of polystyrene products by entities regulated under this chapter is preempted to the department. This preemption does not apply to local

835292

ordinances or provisions thereof enacted before January 1, 2016, and does not limit the authority of a local government to restrict the use of polystyrene by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the local government for the provision of goods or services, unless such use is otherwise preempted by law.

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

And the title is amended as follows:

Delete line 19

and insert:

misbranded; creating s. 500.90, F.S.; preempting to the department the regulation of the use or sale of polystyrene products by entities regulated under the Florida Food Safety Act; providing applicability; amending s. 570.07, F.S.; revising the

576-02403-16

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

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; creating s. 15.0521, F.S.; designating tupelo honey as the official state honey; amending s. 482.111, F.S.; specifying the requirements for original certification as a pest control operator; specifying the fee for the renewal of a certificate; amending s. 482.1562, F.S.; specifying the deadline for recertification of persons who wish to apply urban landscape commercial fertilizer; providing a grace period for recertification; amending s. 500.03, F.S.; revising the definition of the term "food" to include dietary supplements; defining the term "vehicle"; amending s. 500.10, F.S.; providing additional conditions under which food may be deemed adulterated; amending s. 500.11, F.S.; including failure to comply with labeling relating to major food allergens as a criterion for use in determining whether food has been misbranded; amending s. 570.07, F.S.; revising the department's functions, powers, and duties; amending s. 570.30, F.S.; revising the powers and duties of the Division of Administration; amending s. 570.441, F.S.; authorizing the use of funds in the Pest Control Trust Fund for activities of the Division of Agricultural Environmental Services; providing for expiration; amending s. 570.53, F.S.; revising the powers and duties of the Division of Marketing and Development to

576-02403-16

remove the enforcement provisions relating to the dealers in agricultural products law; amending s. 570.544, F.S.; revising the duties of the director of the Division of Consumer Services to include enforcement provisions relating to the dealers in agricultural products law; creating s. 570.68, F.S.; authorizing the Commissioner of Agriculture to create an Office of Agriculture Technology Services; providing duties of the office; amending s. 570.681, F.S.; revising the legislative findings relating to the Florida Agriculture Center and Horse Park; amending s. 570.685, F.S.; authorizing, rather than requiring, the department to provide administrative and staff support services, meeting space, and record storage for the Florida Agriculture Center and Horse Park Authority; amending s. 571.24, F.S.; clarifying the intent that the Florida Agricultural Promotional Campaign serve as a marketing program; removing an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council; amending s. 571.27, F.S.; removing obsolete provisions relating to the authority of the department to adopt rules for entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign; amending s. 571.28, F.S.; revising the composition of the Florida Agricultural Promotional Campaign Advisory Council; amending s. 576.041, F.S.; revising the frequency with

which tonnage reports of fertilizer sales must be made; revising the timeframe for submission of such reports; creating s. 580.0365, F.S.; providing for the preemption of commercial feed and feedstuff regulation; amending s. 581.181, F.S.; providing applicability of provisions requiring treatment or destruction of infested or infected plants and plant products; creating s. 581.189, F.S.; creating the Grove Removal or Vector Elimination (GROVE) Program; specifying the purpose of the program; defining terms; requiring the department to adopt rules for reviewing and ranking applications for cost-share funding to remove or destroy abandoned citrus groves; establishing per applicant award maximums; specifying that the total funds awarded in a fiscal year cannot exceed the amount specifically appropriated for the program; specifying application requirements; specifying how the department must process applications; specifying that noncompliance will result in forfeiture of cost-share funds; requiring the department to rank and review applications and to conduct a certain inspection; specifying grounds for denial of an application; requiring applicants selected for funding to timely initiate and complete the removal of identified citrus trees in accordance with their respective applications; providing the process for making payments to applicants; authorizing the department to adopt rules; specifying that funding for the program is contingent upon specific

appropriation by the Legislature; amending s. 582.01, F.S.; redefining terms relating to soil and water conservation; amending s. 582.02, F.S.; providing legislative intent and findings relating to soil and water conservation districts; providing a statement of purpose; amending s. 582.055, F.S.; revising the powers and duties of the department; authorizing the department to adopt rules; amending s. 582.06, F.S.; requiring the Soil and Water Conservation Council to accept and review requests for creating or dissolving soil and water conservation districts and to make recommendations to the commissioner; requiring the council to provide recommendations to the commissioner relating to the removal of supervisors under certain circumstances; amending s. 582.16, F.S.; revising how district boundaries may be changed; amending s. 582.20, F.S.; revising the powers and duties of districts and supervisors; amending s. 582.29, F.S.; revising the terms under which certain state agencies must cooperate; amending s. 595.402, F.S.; defining terms relating to the school food and nutrition service program; amending s. 595.404, F.S.; revising the powers and duties of the department with regard to the school food and nutrition service program; directing the department to collect and annually publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs; amending s. 595.405, F.S.; clarifying requirements for the school nutrition

576-02403-16

program; requiring breakfast meals to be available to all students in schools that serve any combination of grades kindergarten through 5; amending s. 595.406, F.S.; renaming the "Florida Farm Fresh Schools Program" as the "Florida Farm to School Program"; authorizing the department to establish by rule a recognition program for certain sponsors; amending s. 595.407, F.S.; revising provisions of the children's summer nutrition program to include certain schools that serve any combination of grades kindergarten through 5; revising provisions relating to the duration of the program; authorizing school districts to exclude holidays and weekends; amending s. 595.408, F.S.; conforming provisions to changes made by the act; amending s. 595.501, F.S.; requiring certain entities to complete corrective action plans required by the department or a federal agency to be in compliance with school food and nutrition service programs; amending s. 595.601, F.S.; revising a cross-reference; amending s. 601.31, F.S.; specifying that certain citrus inspectors must be licensed by the state Department of Agriculture rather than the United States Department of Agriculture; amending s. 604.21, F.S.; deleting a requirement relating to complaints filed by electronic transmission or facsimile; amending s. 604.33, F.S.; deleting provisions requiring grain dealers to submit monthly reports; authorizing, rather than requiring, the department to make at least one spot check annually of each grain

576-02403-16

dealer; repealing s. 582.03, F.S., relating to the consequences of soil erosion; repealing s. 582.04, F.S., relating to appropriate corrective methods; repealing s. 582.05, F.S., relating to legislative policy for conservation; repealing s. 582.08, F.S., relating to additional powers of the department; repealing s. 582.09, F.S., relating to an administrative officer of soil and water conservation; repealing s. 582.17, F.S., relating to the presumption as to establishment of a district; repealing s. 582.21, F.S., relating to adoption of land use regulations; repealing s. 582.22, F.S., relating to district regulations and contents; repealing s. 582.23, F.S., relating to performance of work under the regulations by the supervisors; repealing s. 582.24, F.S., relating to the board of adjustment; repealing s. 582.25, F.S., relating to rules of procedure of the board; repealing s. 582.26, F.S., relating to petitioning the board to vary from regulations; repealing s. 582.331, F.S., relating to the authorization to establish watershed improvement districts within soil and water conservation districts; repealing s. 582.34, F.S., relating to petitions for establishment of watershed improvement districts; repealing s. 582.35, F.S., relating to notice and hearing on petitions, determinations of need for districts, and boundaries; repealing s. 582.36, F.S., relating to determination of feasibility of proposed districts and referenda; repealing s.

582.37, F.S., relating to consideration of results of referendums and declaration of organization of districts; repealing s. 582.38, F.S., relating to the organization of districts, certification to clerks of circuit courts, and limitation on tax rates; repealing s. 582.39, F.S., relating to establishment of watershed improvement districts situated in more than one soil and water conservation district; repealing s. 582.40, F.S., relating to change of district boundaries or names; repealing s. 582.41, F.S., relating to boards of directors of districts; repealing s. 582.42, F.S., relating to officers, agents, and employees, surety bonds, and annual audits; repealing s. 582.43, F.S., relating to status and general powers of districts; repealing s. 582.44, F.S., relating to the levy of taxes and taxing procedures; repealing s. 582.45, F.S., relating to fiscal powers of a governing body; repealing s. 582.46, F.S., relating to additional powers and authority of districts; repealing s. 582.47, F.S., relating to the coordination between watershed improvement districts and flood control districts; repealing s. 582.48, F.S., relating to the discontinuance of watershed improvement districts; repealing s. 582.49, F.S., relating to the discontinuance of soil and water conservation districts; repealing s. 589.26, F.S., relating to the dedication of state park lands for public use; providing effective dates.

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

Section 1. Effective upon this act becoming a law, section 15.0521, Florida Statutes, is created to read:

15.0521 Official state honey.—Tupelo honey is designated as the official Florida state honey.

Section 2. Subsections (1) and (7) of section 482.111, Florida Statutes, are amended to read:

482.111 Pest control operator's certificate.—

(1) The department shall issue a pest control operator's certificate to each individual who qualifies under this chapter. Before the issuance of the original certification, an individual must have completed an application for examination, paid the examination fee provided for in s. 482.141, and passed the examination. Before engaging in pest control work, each certified operator must be certified as provided in this section. ~~Application must be made and the issuance fee must be paid to the department for the original certificate within 60 days after the postmark date of written notification of passing the examination. During a period of 30 calendar days following expiration of the 60-day period, an original certificate may be issued; however, a late issuance charge of $50 shall be assessed and must be paid in addition to the issuance fee. An original certificate may not be issued after expiration of the 30-day period, without reexamination.~~

(7) The fee for ~~issuance of an original certificate or~~ the renewal of a certificate ~~thereof~~ shall be set by the department but may not be more than $150 or less than $75; however, until

rules setting these fees are adopted by the department, the issuance fee and the renewal fee shall each be $75.

Section 3. Subsections (5) and (6) of section 482.1562, Florida Statutes, are amended to read:

482.1562 Limited certification for urban landscape commercial fertilizer application.—

(5) An application for recertification must be made 4 years after the date of issuance ~~at least 90 days before the expiration~~ of the current certificate and be accompanied by:

(a) Proof of having completed the 4 classroom hours of acceptable continuing education required under subsection (4).

(b) A recertification fee set by the department in an amount of at least $25 but not more than $75. Until the fee is set by rule, the fee for certification is $25.

(6) ~~A late renewal charge of $50 per month shall be assessed 30 days after the date the application for recertification is due and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 90 days after the recertification date.~~ Upon expiration or after a grace period ending 30 days after expiration, a certificate may be issued only upon the person reapplying in accordance with subsection (3).

Section 4. Paragraph (n) of subsection (1) of section 500.03, Florida Statutes, is amended, and paragraph (cc) is added to that subsection, to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(n) "Food" includes:

1. Articles used for food or drink for human consumption;

2. Chewing gum;

3. Articles used for components of any such article; ~~and~~

4. Articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims; and

5. "Dietary supplements" as the term is defined in 21 U.S.C. s. 321(ff)(1) and (2).

The term includes any raw, cooked, or processed edible substance; ice; any beverage; or any ingredient used, intended for use, or sold for human consumption.

(cc) "Vehicle" means a mode of transportation or mobile carrier used to transport food from one location to another, including, but not limited to, cars, carts, cycles, trucks, vans, trains, railcars, aircraft, and watercraft.

Section 5. Subsection (1) of section 500.10, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

500.10 Food deemed adulterated.—A food is deemed to be adulterated:

(1)(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which is unsafe within the meaning of s. 500.13(1);

(c) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of 21 U.S.C. s. 346(a) or s. 500.13(1);

(d) If it is or it bears or contains, any food additive which is unsafe within the meaning of 21 U.S.C. s. 348 or s. 500.13(1); provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. s. 346 or s. 500.13(1), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of s. 500.13, and this paragraph, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity;

(e) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(f) If it has been produced, prepared, packed, transported, or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered

diseased, unwholesome, or injurious to health;

(g) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

(h) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(5) If a dietary supplement or its ingredients present a significant risk of illness or injury due to:

(a) The recommended or suggested conditions of use on the product label;

(b) The failure to provide conditions of use on the product label; or

(c) It containing an ingredient for which there is inadequate information to provide reasonable assurances that the ingredient does not present a significant risk of illness or injury.

Section 6. Paragraph (m) of subsection (1) of section 500.11, Florida Statutes, is amended to read:

500.11 Food deemed misbranded.—

(1) A food is deemed to be misbranded:

(m) If it is offered for sale and its label or labeling does not comply with the requirements of 21 U.S.C. s. 343(q) or 21 U.S.C. s. 343(w) pertaining to nutrition or allergen information.

Section 7. Subsection (20) of section 570.07, Florida Statutes, is amended, and subsection (44) is added to that section, to read:

570.07 Department of Agriculture and Consumer Services;

576-02403-16

functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(20)(a) To stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products;

(b) To conduct activities that may foster a better understanding and more efficient cooperation among producers, dealers, buyers, food editors, and the consuming public in the promotion and marketing of Florida's agricultural and agricultural business products; and

(c) To sponsor events, trade breakfasts, luncheons, and dinners and distribute promotional materials and favors in connection with meetings, conferences, and conventions of dealers, buyers, food editors, and merchandising executives that will assist in the promotion and marketing of Florida's agricultural and agricultural business products to the consuming public.

The department is authorized to receive and expend donations contributed by private persons for the purpose of covering costs associated with the above described activities.

(44) In its own name:

(a) To perform all acts necessary to secure letters of patent, copyrights, and trademarks on any work products of the department and enforce its rights therein.

(b) To license, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use of such department work products on a royalty basis or for such other consideration as the department deems proper.

576-02403-16

(c) To take any action necessary, including legal action, to protect such department work products against improper or unlawful use or infringement.

(d) To enforce the collection of any sums due to the department for the manufacture or use of such department work products by another party.

(e) To sell any of such department work products and execute all instruments necessary to consummate any such sale.

(f) To do all other acts necessary and proper for the execution of powers and duties conferred upon the department by this section, including adopting rules, as necessary, in order to administer this section.

Section 8. Subsection (5) of section 570.30, Florida Statutes, is amended to read:

570.30 Division of Administration; powers and duties.—The Division of Administration shall render services required by the department and its other divisions, or by the commissioner in the exercise of constitutional and cabinet responsibilities, that can advantageously and effectively be centralized and administered and any other function of the department that is not specifically assigned by law to some other division. The duties of this division include, but are not limited to:

~~(5) Providing electronic data processing and management information systems support for the department.~~

Section 9. Subsection (4) is added to section 570.441, Florida Statutes, to read:

570.441 Pest Control Trust Fund.—

(4) In addition to the uses authorized under subsection (2), the department may use moneys collected or received under

chapter 482 to carry out s. 570.44. This subsection expires June 30, 2019.

Section 10. Subsection (2) of section 570.53, Florida Statutes, is amended to read:

570.53 Division of Marketing and Development; powers and duties.—The powers and duties of the Division of Marketing and Development include, but are not limited to:

~~(2) Enforcing the provisions of ss. 604.15-604.34, the dealers in agricultural products law, and ss. 534.47-534.53.~~

Section 11. Subsection (2) of section 570.544, Florida Statutes, is amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.—

(2) The director shall supervise, direct, and coordinate the activities of the division and shall, under the direction of the department, enforce ss. 604.15-604.34 and ~~the provisions of~~ chapters 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849.

Section 12. Section 570.68, Florida Statutes, is created to read:

570.68 Office of Agriculture Technology Services.—The commissioner may create an Office of Agriculture Technology Services under the supervision of a senior manager. The senior manager is exempt under s. 110.205 in the Senior Management Service and shall be appointed by the commissioner. The office shall provide electronic data processing and agency information technology services to support and facilitate the functions, powers, and duties of the department.

Section 13. Section 570.681, Florida Statutes, is amended

to read:

570.681 Florida Agriculture Center and Horse Park; legislative findings.—It is the finding of the Legislature that:

~~(1) Agriculture is an important industry to the State of Florida, producing over $6 billion per year while supporting over 230,000 jobs.~~

(1)~~(2)~~ Equine and other agriculture-related industries ~~will~~ strengthen and benefit each other with the establishment of a statewide agriculture and horse facility.

(2)~~(3)~~ The ~~A~~ Florida Agriculture Center and Horse Park provides ~~will provide~~ Florida with a unique tourist experience for visitors and residents, thus generating taxes and additional dollars for the state.

(3)~~(4)~~ Promoting the Florida Agriculture Center and Horse Park as a joint effort between the state and the private sector allows ~~will allow~~ this facility to use ~~utilize~~ experts and generate revenue from many areas to ensure the success of this facility.

Section 14. Paragraphs (b) and (c) of subsection (4) of section 570.685, Florida Statutes, are amended to read:

570.685 Florida Agriculture Center and Horse Park Authority.—

(4) The authority shall meet at least semiannually and elect a chair, a vice chair, and a secretary for 1-year terms.

(b) The department may provide ~~shall be responsible for providing~~ administrative and staff support services relating to the meetings of the authority and ~~shall provide~~ suitable space in the offices of the department for the meetings and the storage of records of the authority.

(c) In conducting its meetings, the authority shall use accepted rules of procedure. The secretary shall keep a complete record of the proceedings of each meeting showing~~, which record shall show~~ the names of the members present and the actions taken. These records shall be kept on file with the department, and such records and other documents regarding matters within the jurisdiction of the authority shall be subject to inspection by members of the authority.

Section 15. Section 571.24, Florida Statutes, is amended to read:

571.24 Purpose; duties of the department.—The purpose of this part is to authorize the department to establish and coordinate the Florida Agricultural Promotional Campaign. The campaign is intended to serve as a marketing program for the promotion of agricultural commodities, value-added products, and agricultural-related businesses of this state. The campaign is not a food safety and traceability program. The duties of the department shall include, but are not limited to:

(1) Developing logos and authorizing the use of logos as provided by rule.

(2) Registering participants.

(3) Assessing and collecting fees.

(4) Collecting rental receipts for industry promotions.

(5) Developing in-kind advertising programs.

(6) Contracting with media representatives for the purpose of dispersing promotional materials.

(7) Assisting the representative of the department who serves on the Florida Agricultural Promotional Campaign Advisory Council.

~~(8) Designating a division employee to be a member of the Advertising Interagency Coordinating Council.~~

(8)~~(9)~~ Adopting rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(9)~~(10)~~ Enforcing and administering the provisions of this part, including measures ensuring that only Florida agricultural or agricultural based products are marketed under the "Fresh From Florida" or "From Florida" logos or other logos of the Florida Agricultural Promotional Campaign.

Section 16. Section 571.27, Florida Statutes, is amended to read:

571.27 Rules.—The department is authorized to adopt rules that implement, make specific, and interpret ~~the provisions of~~ this part~~, including rules for entering into contracts with advertising agencies for services which are directly related to the Florida Agricultural Promotional Campaign. Such rules shall establish the procedures for negotiating costs with the offerors of such advertising services who have been determined by the department to be qualified on the basis of technical merit, creative ability, and professional competency. Such determination of qualifications shall also include consideration of the provisions in s. 287.055(3), (4), and (5)~~. The department is further authorized to determine, by rule, the logos or product identifiers to be depicted for use in advertising, publicizing, and promoting the sale of Florida agricultural products or agricultural-based products in the Florida Agricultural Promotional Campaign. The department may also adopt rules consistent ~~not inconsistent~~ with ~~the provisions of~~ this part as in its judgment may be necessary for participant

registration, renewal of registration, classes of membership, application forms, and ~~as well as~~ other forms and enforcement measures ensuring compliance with this part.

Section 17. Subsection (1) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(1) ORGANIZATION.—There is ~~hereby~~ created within the department the Florida Agricultural Promotional Campaign Advisory Council, to consist of 15 members appointed by the Commissioner of Agriculture for 4-year staggered terms. The membership shall include: 13 ~~six~~ members representing agricultural producers, shippers, ~~or~~ packers, ~~three members representing agricultural~~ retailers, ~~two members representing~~ agricultural associations, and wholesalers ~~one member representing a wholesaler~~ of agricultural products; 1~~, one~~ member representing consumers;~~,~~ and 1 ~~one~~ member representing the department. Initial appointment of the council members shall be four members to a term of 4 years, four members to a term of 3 years, four members to a term of 2 years, and three members to a term of 1 year.

Section 18. Subsection (2) of section 576.041, Florida Statutes, is amended to read:

576.041 Inspection fees; records.—

(2) Before the distribution of a fertilizer, each licensee shall make application upon a form provided by the department to report quarterly ~~monthly~~ the tonnage of fertilizer sold in the state and make payment of the inspection fee. The continuance of a license is conditioned upon the applicant's:

(a) Maintaining records and a bookkeeping system that will accurately indicate the tonnage of fertilizer sold by the licensee; and

(b) Consent to examination of the business records and books by the department for a verification of the correctness of tonnage reports and inspection fees. Tonnage reports of sales and payment of inspection fee shall be made quarterly using the department's regulatory website or ~~monthly~~ on forms furnished by the department and submitted within 30 days following the close of the reporting period ~~on or before the fifteenth day of the month succeeding the month covered by the reports~~.

Section 19. Section 580.0365, Florida Statutes, is created to read:

580.0365 Preemption of regulatory authority over commercial feed and feedstuff.—It is the intent of the Legislature to eliminate duplication of regulation over commercial feed and feedstuff. Notwithstanding any other law, the authority to regulate, inspect, sample, and analyze commercial feed or feedstuff distributed in this state or to exercise the powers and duties of regulation granted by this chapter, including the assessment of penalties for violation of this chapter, is preempted to the department.

Section 20. Subsection (3) is added to section 581.181, Florida Statutes, to read:

581.181 Notice of infection of plants; destruction.—

(3) This section does not apply to plants or plant products infested with pests or noxious weeds if such pests and weeds are determined to be widely established within the state and are not specifically regulated under rules adopted by the department or

under any other provisions of law.

Section 21. Effective upon becoming a law, section 581.189, Florida Statutes, is created to read:

581.189 Grove Removal or Vector Elimination (GROVE) Program.—

(1) There is created within the Department of Agriculture and Consumer Services the Grove Removal or Vector Elimination Program, a cost-sharing program for the removal or destruction of abandoned citrus groves to eliminate the material harboring the citrus disease Huanglongbing, also known as citrus greening, and the vectors that spread the disease.

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

(a) "Abandoned citrus grove" means a citrus grove that has minimal or no production value and is no longer economically viable as a commercial citrus grove.

(b) "Applicant" means the person who owns an abandoned citrus grove.

(c) "Eligible costs" means the costs, incurred after an application is selected for funding, of the removal or destruction the citrus trees and the elimination of any citrus greening vectors, as described in the removal or destruction plan in the funded application.

(d) "Funded application" means an application selected for cost-share funding pursuant to this section and rules adopted by the department.

(e) "Program" means the Grove Removal or Vector Elimination Program.

(3) The department shall adopt by rule the standards to be used in reviewing and ranking applications for cost-share

funding under the program based on the following factors:

(a) The length of time the citrus groves have been abandoned.

(b) Whether the citrus groves are located within a Citrus Health Management Area.

(c) The proximity of the abandoned citrus groves to other citrus groves currently in production.

(4) An applicant may submit multiple applications for the program, but is eligible only for a maximum of $125,000 in program cost-share funding in a given fiscal year. The department may award to each funded application a cost-share of up to 80 percent of eligible costs. The total amount of cost-share allocated under the program in each fiscal year may not exceed the amount specifically appropriated for the program for the fiscal year.

(5) An applicant seeking cost-share assistance under the program must submit an application to the department by a date determined by department rule. The application must include, at minimum:

(a) The applicant's plan to remove or destroy citrus trees and any citrus greening vectors in the abandoned citrus grove.

(b) An affidavit from the applicant certifying that all information contained in the application is true and correct.

(c) All information determined by rule to be necessary for the department to determine eligibility for the program and rank applications.

(6) If the department determines an application to be incomplete, it may require the applicant to submit additional information within 10 days after such determination is made.

(7) Each fiscal year, the department shall review all complete applications received in accordance with its rules adopted pursuant to subsection (5). For each such complete submitted application, the department must rank the applications in accordance with the factors specified in subsection (3) and, before selecting an application for funding, must conduct an inspection of the abandoned citrus grove that is the subject of the application.

(8) The department may deny an application pursuant to chapter 120 for failure to comply with this section and department rules.

(9) If an application is selected for funding, the applicant must initiate and complete the removal or destruction of the citrus trees identified in the application within the timeframe specified by department rule. The applicant's failure to initiate and complete the removal or destruction of the identified citrus trees within the time specified by the department results in the forfeiture of the cost-share funding approved based on the application. Upon such occurrence, the department shall notify the next eligible applicant, based upon its ranking of applicants for the fiscal year, of the availability of cost-share funding. Such applicant, upon acceptance, may be awarded cost-share funding pursuant to this section, subject to available program funds.

(10) Upon completion of the removal or destruction of the citrus trees identified in the funded application, the applicant shall present proof of payment of removal or destruction costs to the department. Upon receipt of satisfactory proof of payment and satisfactory proof of the removal or destruction of the

trees identified in the funded application, the department may issue payment to the applicant for the previously approved cost-share amount.

(11) The department may adopt rules to implement and administer this section, including an application process and requirements, an application ranking process that is consistent with the factors specified in subsection (3), and the administration of cost-share funding.

(12) The annual awarding of funding through the program is subject to specific legislative appropriation for this purpose.

Section 22. Subsections (1), (4), (5), (7), and (8) of section 582.01, Florida Statutes, are amended to read:

582.01 Definitions.—Wherever used or referred to in this chapter unless a different meaning clearly appears from the context:

(1) "District" ~~or "soil conservation district"~~ or "soil and water conservation district" means a governmental subdivision of this state, and a body corporate and politic, organized in accordance with the provisions of this chapter, for the purpose, with the powers, and subject to the provisions set forth in this chapter. The term "district," ~~or "soil conservation district,"~~ when used in this chapter, means and includes a "soil and water conservation district." All districts heretofore or hereafter organized under this chapter shall be known as soil and water conservation districts and shall have all the powers set out herein.

(4) "Landowner" or "owner of land" includes any person who holds ~~shall hold~~ legal or equitable title to any lands lying within a district organized under the provisions of this

chapter.

(5) "Land occupier" or "occupier of land" includes any person, other than the owner, who is a lessee, renter, or tenant or who is otherwise ~~shall be~~ in possession of land ~~any lands~~ lying within a district ~~organized under the provisions of this chapter, whether as lessee, renter, tenant, or otherwise~~.

(7) "Due notice," in addition to notice required pursuant to the provisions of chapter 120, means notice published at least twice, with an interval of at least 7 days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area ~~or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally~~. ~~At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.~~

~~(8) "Administrative officer" means the administrative officer of soil and water conservation created by s. 582.09.~~

Section 23. Section 582.02, Florida Statutes, is amended to read:

582.02 Legislative intent and findings; purpose of districts ~~Lands a basic asset of state~~.—

(1) It is the intent of the Legislature to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, protect public lands, and protect and promote

the health, safety, and welfare of the public.

(2) The Legislature finds that the farm, forest, and grazing lands; green spaces; recreational areas; and natural areas of the state are among its ~~the~~ basic assets ~~of the state~~ and that the conservation ~~preservation~~ of these assets ~~lands~~ is in the public interest ~~necessary to protect and promote the health, safety, and general welfare of its people ; improper land use practices have caused and have contributed to, and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by fire, wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the top soil is being burned, washed and blown out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by fire, wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any landowner or occupier to conserve the soil and control erosion upon her or his lands causes destruction by burning, washing and blowing of soil and water from her or his lands onto other lands and makes the conservation of soil and control erosion of such other lands difficult or impossible~~.

(3) The Legislature further finds it necessary that appropriate land and water resource protection practices be implemented to ensure the conservation of this state's farm, forest, and grazing lands; green spaces; recreational areas; and natural areas and to conserve, protect, and properly use soil

and water resources.

(4) The purpose of the soil and water conservation districts is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices and to work in conjunction with federal, state, and local agencies in all matters to implement this chapter.

Section 24. Section 582.055, Florida Statutes, is amended to read:

582.055 Powers and duties of the Department of Agriculture and Consumer Services.—The department has all of the following powers and duties:

(1) To administer ~~The provisions of~~ this chapter ~~shall be administered by the Department of Agriculture and Consumer Services~~.

(2) ~~The department is authorized~~ To receive gifts, appropriations, materials, equipment, lands, and facilities and to manage, operate, and disburse them for the use and benefit of the soil and water conservation districts of the state.

(3) To require ~~The department shall provide for~~ an annual audit of the accounts of receipts and disbursements.

(4) To ~~The department may~~ furnish information and call upon any state or local agencies for cooperation in carrying out the provisions of this chapter.

(5) To offer assistance as may be appropriate to the supervisors of soil and water conservation districts and to facilitate communication and cooperation between the districts.

(6) To seek the cooperation and assistance of the Federal

Government and any of its agencies, and of agencies and counties of this state, in the work of such districts, including the receipt and expenditure of state, federal, or other funds or contributions.

(7) To disseminate information throughout the state concerning the activities and programs of the soil and water conservation districts and to encourage the formation of such districts in areas where their organization is desirable.

(8) To create or dissolve a soil and water conservation district pursuant to this chapter.

(9) To adopt rules, as necessary, to implement this chapter.

Section 25. Subsection (2) of section 582.06, Florida Statutes, is amended to read:

582.06 Soil and Water Conservation Council; powers and duties.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—

(a) The meetings, powers and duties, procedures, and recordkeeping of the Soil and Water Conservation Council shall be conducted pursuant to s. 570.232.

(b) The council shall accept and review requests for creating or dissolving soil and water conservation districts and shall, by a majority vote, recommend to the commissioner by resolution that a district be created or dissolved pursuant to the request or that the request be denied.

(c) At the request of the Governor or a district, the council shall consider and recommend to the Governor the removal or retention of a supervisor for neglect of duty or malfeasance in office.

576-02403-16

Section 26. Section 582.16, Florida Statutes, is amended to read:

582.16 Change of ~~Addition of territory to~~ district boundaries ~~or removal of territory therefrom~~.~~—~~Requests to increase or decrease the boundaries of ~~Petitions for including additional territory or removing territory within~~ an existing district may be filed with the department ~~of Agriculture and Consumer Services~~, and the department shall follow the proceedings provided for in this chapter to create a district ~~in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion or removal~~. ~~The department shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. If the petition is signed by a majority of the landowners of such area, no referendum need be held. In referenda upon petitions for such inclusions or removals, all owners of land lying within the proposed area to be added or removed shall be eligible to vote.~~

Section 27. Section 582.20, Florida Statutes, is amended to read:

582.20 Powers of districts and supervisors.~~—~~A soil and water conservation district organized under ~~the provisions of~~ this chapter constitutes ~~shall constitute~~ a governmental subdivision of this state~~,~~ and a public body corporate and politic, exercising public powers, and such district and the supervisors thereof~~, shall~~ have all of the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, studies ~~investigations~~, and research relating to ~~the character of~~ soil and water resources

576-02403-16

and ~~erosion and floodwater and sediment damages, to the conservation, development and utilization of soil and water resources and the disposal of water, and to the preventive and control measures and works of improvement needed;~~ to publish and disseminate the results of such surveys, studies, and ~~investigations, or~~ research~~,~~ ~~;~~ and related ~~to disseminate~~ information. ~~concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;~~

(2) To conduct agricultural best management practices demonstration ~~demonstrational~~ projects and projects for the conservation, protection, and restoration of soil and water resources:

(a) Within the district's boundaries;

(b) Within another district's boundaries, subject to the other district's approval;~~, territory within another district's boundaries subject to the other district's approval, or territory~~

(c) In areas not contained within any district's boundaries on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof; or~~, and~~

(d) On any other lands within the district's boundaries, ~~territory~~ within another district's boundaries subject to the other district's approval, or on lands ~~territory~~ not contained within any district's boundaries upon obtaining the consent of

the owner and occupiers of such lands or the necessary rights or interests in such lands.~~, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water may be carried out;~~

~~(3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in s. 582.04 on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;~~

(3) ~~(4)~~ To cooperate~~,~~ or enter into agreements with~~, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to,~~ any special district, municipality, county, water management district, state or

federal agency, governmental or otherwise, or any owner or occupier of lands within the district's boundaries; on lands~~,~~ ~~territory~~ within another district's boundaries, subject to the other district's approval; or on lands~~, or territory~~ not contained within any district's boundaries, to further the purpose of this chapter. ~~in the carrying on of erosion control or prevention operations and works of improvement for flood prevention or the conservation, development and utilization, of soil and water resources and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;~~

(4) ~~(5)~~ To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in such property ~~therein~~; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in complying with ~~carrying out the purposes and provisions of~~ this chapter; and to sell, lease, or otherwise dispose of any of its property or interests ~~therein~~ in compliance with ~~furtherance of the purposes and the provisions of~~ this chapter.~~;~~

(5) ~~(6)~~ To make available, on such terms as it shall prescribe, agricultural, engineering, and other machinery, materials, and equipment to landowners and occupiers of land within the district's boundaries, on lands ~~territory~~ within another district's boundaries, subject to the other district's

approval~~;~~ or on lands ~~territory~~ not contained within any district's boundaries. Such machinery, materials, and equipment must~~, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will~~ assist such landowners and occupiers of land to conduct ~~carry on~~ operations upon their lands for the conservation and protection of soil and water resources. ~~and for the prevention or control of soil erosion and for flood prevention or the conservation, development and utilization, of soil and water resources and the disposal of water;~~

(6) ~~(7)~~ To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.~~;~~

(7) ~~(8)~~ To provide or assist in providing training and education programs that further the purposes of this chapter. ~~develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; control of artesian wells; and to publish such plans and~~

~~information and bring them to the attention of owners and occupiers of lands within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries;~~

~~(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water, located within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage as agent of the United States or any of its agencies, or of the state or any of its agencies, any soil-conservation, erosion-control, erosion-prevention, or any project for flood prevention or for the conservation, development, and utilization of soil and water resources, and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries; to act as agent for the United States, or any of its agencies, or for the state or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil-conservation, erosion-control, erosion-prevention, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the~~

576-02403-16

~~disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations;~~

(8)~~(10)~~ To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as provided in this chapter; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and upon a majority vote of the supervisors of the district, to borrow money and to execute promissory notes and other evidences of indebtedness in connection therewith, and to pledge, mortgage, and assign the income of the district and its personal property as security therefor, the notes and other evidences of indebtedness to be general obligations only of the district and in no event to constitute an indebtedness for which the faith and credit of the state or any of its revenues are pledged~~; to make, amend, and repeal rules and regulations not inconsistent with this chapter to carry into effect its purposes and powers~~.

(9) In coordination with the applicable counties, to use the services of the county agricultural agents and the facilities of their offices, if practicable and feasible. The supervisors may employ additional permanent or temporary staff, as needed, and determine their qualifications, duties, and

576-02403-16

compensation. The supervisors may delegate to their chair, to one or more supervisors, or to employees such powers and duties as they may deem proper, consistent with this chapter. The supervisors shall furnish to the department, upon request, copies of rules, orders, contracts, forms, and other documents they adopt or employ, and other information concerning their activities which the department may require in the performance of its duties under this chapter.

(10) To adopt rules pursuant to chapter 120 to implement this chapter.

(11) To request that the Governor remove a supervisor for neglect of duty or malfeasance in office by adoption of a resolution at a public meeting. If the district believes there is a need for a review of the request, the district may request the council, by resolution, to review the request and recommend action to the Governor. ~~As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;~~

(12) ~~No~~ Provisions with respect to the acquisition, operation, or disposition of property by public bodies of this state do not apply ~~shall be applicable~~ to a district organized under this chapter ~~hereunder~~ unless the Legislature ~~shall~~ specifically provides for their application ~~so state~~. The

property and property rights ~~of every kind and nature~~ acquired by a ~~any~~ district organized under ~~the provisions of~~ this chapter are ~~shall be~~ exempt from state, county, and other taxation.

Section 28. Section 582.29, Florida Statutes, is amended to read:

582.29 State agencies to cooperate.—Agencies of this state which ~~shall~~ have jurisdiction over, or are ~~be~~ charged with, the administration of any state-owned lands, and agencies of any county~~,~~ or other governmental subdivision of the state~~,~~ which ~~shall~~ have jurisdiction over, or are ~~be~~ charged with the administration of, any county-owned or other publicly owned lands~~, lying within the boundaries of any district organized under this chapter, the boundaries of another district subject to that district's approval, or territory not contained within the boundaries of any district organized under this chapter,~~ shall cooperate to the fullest extent with the supervisors of such districts in the implementation ~~effectuation~~ of programs and operations undertaken by the supervisors under ~~the provisions of~~ this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. ~~The provisions of land use regulations adopted shall be in all respects observed by the agencies administering such publicly owned lands.~~

Section 29. Present subsections (4) and (5) of section 595.402, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and a new subsection (4) and subsections (7) and (8) are added to that section, to read:

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

(4) "School breakfast program" means a program authorized

by s. 4 of the Child Nutrition Act of 1966 and administered by the department.

(7) "Summer nutrition program" means one or more of the programs authorized under 42 U.S.C. s. 1761.

(8) "Universal school breakfast program" means a program that makes breakfast available at no cost to all students regardless of their household income.

Section 30. Section 595.404, Florida Statutes, is amended to read:

595.404 School food and other nutrition programs ~~service program~~; powers and duties of the department.—The department has the following powers and duties:

(1) To conduct, supervise, and administer the program that will be carried out using federal or state funds, or funds from any other source.

(2) To conduct, supervise, and administer a Farmers' Market Nutrition Program to provide participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) with locally grown fruits and vegetables. The program is to be carried out using federal or state funds or funds from any other source.

(3) ~~(2)~~ To fully cooperate with the United States Government and its agencies and instrumentalities so that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(4) ~~(3)~~ To implement and adopt by rule, as required, federal regulations ~~to maximize federal assistance for the program~~.

(5) ~~(4)~~ To act as agent of, or contract with, the Federal Government, another state agency, any county or municipal

government, or sponsor for the administration of the program, including the distribution of funds provided by the Federal Government to support the program.

(6) ~~(5)~~ To provide ~~make a reasonable effort to ensure that any school designated as~~ a "severe need school" ~~receives~~ the highest rate of reimbursement to which it is entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

(7) ~~(6)~~ To develop and propose legislation necessary to implement the program, encourage the development of innovative school food and nutrition services, and expand participation in the program.

(8) ~~(7)~~ To annually allocate among the sponsors, as applicable, funds provided from the school breakfast supplement in the General Appropriations Act based on each district's total number of free and reduced-price breakfast meals served.

(9) ~~(8)~~ To employ such persons as are necessary to perform its duties under this chapter.

(10) ~~(9)~~ To adopt rules covering the administration, operation, and enforcement of the program, and the Farmers' Market Nutrition Program, as well as to implement ~~the provisions of~~ this chapter.

(11) ~~(10)~~ To adopt and implement an appeal process by rule, as required by federal regulations, for applicants and participants under the programs implemented under this chapter ~~program~~, notwithstanding ss. 120.569 and 120.57-120.595.

(12) ~~(11)~~ To assist, train, and review each sponsor in its implementation of the program.

(13) ~~(12)~~ To advance funds from the program's annual appropriation to a summer nutrition program sponsor ~~sponsors~~,

when requested, in order to implement ~~the provisions of~~ this chapter and in accordance with federal regulations.

(14) To collect data on food purchased through the programs defined in ss. 595.402(3) and 595.406 and to publish that data annually.

(15) To enter into agreements with federal or state agencies to coordinate or cooperate in the implementation of nutrition programs.

Section 31. Section 595.405, Florida Statutes, is amended to read:

595.405 School nutrition program requirements ~~for school districts and sponsors~~.—

(1) Each ~~school~~ district school board shall consider the recommendations of the district school superintendent and adopt policies to provide for an appropriate food and nutrition service program for students consistent with federal law and department rules.

(2) Each ~~school~~ district school board shall implement school breakfast programs that make breakfast meals available to all students in each ~~elementary~~ school that serves any combination of grades kindergarten through 5. ~~Universal school breakfast programs shall be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. Each school shall, to the maximum extent practicable, make breakfast meals available to students at an alternative site location, which may include, but need not be limited to, alternative breakfast options as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School~~

~~Breakfast Program.~~

(3) Each ~~school~~ district school board must annually set prices for breakfast meals at rates that, combined with federal reimbursements and state allocations, are sufficient to defray costs of school breakfast programs without requiring allocations from the district's operating funds, except if the district school board approves lower rates.

~~(4) Each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. Each school district shall approve or disapprove a policy, after receiving public testimony concerning the proposed policy at two or more regular meetings, which makes universal, free school breakfast meals available to all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals.~~

(4) ~~(5)~~ Each ~~elementary, middle, and high~~ school operating a breakfast program shall make a breakfast meal available if a student arrives at school on the school bus less than 15 minutes before the first bell rings and shall allow the student at least 15 minutes to eat the breakfast.

(5) Each district school board is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. A universal school breakfast program shall be implemented in each school in which 80 percent or more of the students are eligible for free or reduced-price meals, unless the district school board, after considering public testimony at two or more regularly scheduled board meetings, decides to not implement such a program in such

schools.

(6) To increase school breakfast and universal school breakfast program participation, each school district must, to the maximum extent practicable, make breakfast meals available to students through alternative service models as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.

(7) ~~(6)~~ Each ~~school~~ district school board shall annually provide ~~to all students in each elementary, middle, and high school~~ information prepared by the district's food service administration regarding available ~~its~~ school breakfast programs. The information shall be communicated through school announcements and ~~written~~ notices sent to all parents.

(8) ~~(7)~~ A ~~school~~ district school board may operate a breakfast program providing for food preparation at the school site or in central locations with distribution to designated satellite schools or any combination thereof.

~~(8) Each sponsor shall complete all corrective action plans required by the department or a federal agency to be in compliance with the program.~~

Section 32. Section 595.406, Florida Statutes, is amended to read:

595.406 Florida Farm to School ~~Fresh Schools~~ Program.—

(1) In order to implement the Florida Farm to School ~~Fresh Schools~~ Program, the department shall develop policies pertaining to school food services which encourage:

(a) Sponsors to buy fresh and high-quality foods grown in this state when feasible.

(b) Farmers in this state to sell their products to sponsors, school districts, and schools.

(c) Sponsors to demonstrate a preference for competitively priced organic food products.

(d) Sponsors to make reasonable efforts to select foods based on a preference for those that have maximum nutritional content.

(2) The department shall provide outreach, guidance, and training to sponsors, schools, school food service directors, parent and teacher organizations, and students about the benefit of fresh food products from farms in this state.

(3) The department may recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program.

Section 33. Subsection (2) of section 595.407, Florida Statutes, is amended to read:

595.407 Children's summer nutrition program.—

(2) Each school district shall develop a plan to sponsor or operate a summer nutrition program to operate sites in the school district as follows:

(a) Within 5 miles of at least one ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 ~~consecutive~~ days between the end of the school year and the beginning of the next school year. School districts may exclude holidays and weekends.

(b) Within 10 miles of each ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50

percent or more of the students are eligible for free or reduced-price school meals, except as operated pursuant to paragraph (a).

Section 34. Section 595.408, Florida Statutes, is amended to read:

595.408 Food ~~Commodity~~ distribution services; department responsibilities and functions.—

(1)(a) The department shall conduct, supervise, and administer all food ~~commodity~~ distribution services that will be carried on using federal or state funds, or funds from any other source, or food ~~commodities~~ received and distributed from the United States or any of its agencies.

(b) The department shall determine the benefits each applicant or recipient of assistance is entitled to receive under this chapter, provided that each applicant or recipient is a resident of this state and a citizen of the United States or is an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) The department shall cooperate fully with the United States Government and its agencies and instrumentalities so that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(3) The department may:

(a) Accept any duties with respect to food ~~commodity~~ distribution services as are delegated to it by an agency of the Federal Government or any state, county, or municipal government.

(b) Act as agent of, or contract with, the Federal Government, state government, or any county or municipal government in the administration of food ~~commodity~~ distribution services to secure the benefits of any public assistance that is available from the Federal Government or any of its agencies, and in the distribution of funds received from the Federal Government, state government, or any county or municipal government for food ~~commodity~~ distribution services within the state.

(c) Accept from any person or organization all offers of personal services, food ~~commodities~~, or other aid or assistance.

(4) This chapter does not limit, abrogate, or abridge the powers and duties of any other state agency.

Section 35. Section 595.501, Florida Statutes, is amended to read:

595.501 Penalties.—

(1) If a corrective action plan is issued by the department or a federal agency, each sponsor must complete the corrective action plan to be in compliance with the program.

(2) Any person or~~,~~ sponsor~~, or school district~~ that violates any provision of this chapter or any rule adopted thereunder or otherwise does not comply with the program is subject to a suspension or revocation of their agreement, loss of reimbursement, or a financial penalty in accordance with federal or state law or both. This section does not restrict the applicability of any other law.

Section 36. Section 595.601, Florida Statutes, is amended to read:

595.601 Food and Nutrition Services Trust Fund.—Chapter 99-

37, Laws of Florida, recreated the Food and Nutrition Services Trust Fund to record revenue and disbursements of Federal Food and Nutrition funds received by the department as authorized in ss. 595.404 and 598.408 ~~s. 595.405~~.

Section 37. Section 601.31, Florida Statutes, is amended to read:

601.31 Citrus inspectors; employment.—The Department of Agriculture may in each year employ as many citrus fruit inspectors for such period or periods, not exceeding 1 year, as the Department of Agriculture shall deem necessary for the effective enforcement of the citrus fruit laws of this state. All persons authorized to inspect and certify to the maturity and grade of citrus fruit shall be governed in the discharge of their duties as such inspectors by the provisions of law and by the rules adopted by the Department of Citrus and the Department of Agriculture and shall perform their duties under the direction and supervision of the Department of Agriculture. All citrus inspectors appointed for the enforcement of this chapter shall be persons who are duly licensed or certified by the ~~United States~~ Department of Agriculture as citrus fruit inspectors.

Section 38. Paragraphs (b) and (d) of subsection (1) and subsection (2) of section 604.21, Florida Statutes, are amended to read:

604.21 Complaint; investigation; hearing.—

(1)

(b) To be considered timely filed, a complaint together with any required affidavits ~~or notarizations~~ must be received by the department within 6 months after the date of sale by

electronic transmission, facsimile, regular mail, certified mail, or private delivery service. If the complaint is sent by a service other than electronic mail or facsimile, the mailing shall be postmarked or dated on or before the 6-month deadline to be accepted as timely filed.

(d) A person, partnership, corporation, or other business entity filing a complaint shall submit to the department a ~~the following documents: three~~ completed complaint affidavit ~~affidavits~~ on a form provided by the department which bears ~~with~~ an original signature of an owner, partner, general partner, or corporate officer and an original notarization and which is accompanied by ~~on each affidavit. If the complaint is filed by electronic transmission or facsimile, the original affidavits and original notarizations shall be filed with the department not later than the close of business of the tenth business day following the electronic transmission or facsimile filing. Attached to each complaint affidavit shall be~~ copies of all documents that ~~to~~ support the complaint. Supporting documents may include ~~be~~ copies of invoices, bills of lading, packing or shipping documents, demand letters, or any other documentation to support the claim. In cases in which ~~there are~~ multiple invoices are being claimed, a summary list of all claimed invoices must accompany the complaint.

(2) Upon the filing of a ~~such~~ complaint under this subsection ~~in the manner herein provided~~, the department shall investigate the complaint and ~~matters complained of; whereupon,~~ if it finds that~~, in the opinion of the department,~~ the facts contained in the complaint warrant it ~~such action~~, ~~the department~~ shall serve notice of the filing of complaint on ~~to~~

the dealer against whom the complaint has been filed at the last address of record. Such notice shall be accompanied by a ~~true~~ copy of the complaint. A copy of such notice and complaint shall also be served on any ~~to the~~ surety company~~, if any,~~ that provided the bond for the dealer, and the ~~which~~ surety company shall become party to the action. Such notice of the complaint shall inform the dealer of a reasonable time within which to answer the complaint by advising the department in writing that the allegations in the complaint are admitted or denied or that the complaint has been satisfied. Such notice shall also inform the dealer and the surety company or financial institution of a right to request a hearing on the complaint~~, if requested~~.

Section 39. Section 604.33, Florida Statutes, is amended to read:

604.33 Security requirements for grain dealers.—Each grain dealer doing business in the state shall maintain liquid security, in the form of grain on hand, cash, certificates of deposit, or other nonvolatile security that can be liquidated in 10 days or less, or cash bonds, surety bonds, or letters of credit, that have been assigned to the department and that are conditioned to secure the faithful accounting for and payment to the producers for grain stored or purchased, in an amount equal to the value of grain which the grain dealer has received from grain producers for which the producers have not received payment. The bonds must be executed by the applicant as principal and by a surety corporation authorized to transact business in the state. The certificates of deposit and letters of credit must be from a recognized financial institution doing business in the United States. ~~Each grain dealer shall report to~~

~~the department monthly, on or before a date established by rule of the department, the value of grain she or he has received from producers for which the producers have not received payment and the types of transaction involved, showing the value of each type of transaction. The report shall also include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.~~ The department may ~~shall~~ make at least one spot check annually of each grain dealer to determine compliance with the requirements of this section.

Section 40. Section 582.03, Florida Statutes, is repealed.
Section 41. Section 582.04, Florida Statutes, is repealed.
Section 42. Section 582.05, Florida Statutes, is repealed.
Section 43. Section 582.08, Florida Statutes, is repealed.
Section 44. Section 582.09, Florida Statutes, is repealed.
Section 45. Section 582.17, Florida Statutes, is repealed.
Section 46. Section 582.21, Florida Statutes, is repealed.
Section 47. Section 582.22, Florida Statutes, is repealed.
Section 48. Section 582.23, Florida Statutes, is repealed.
Section 49. Section 582.24, Florida Statutes, is repealed.
Section 50. Section 582.25, Florida Statutes, is repealed.
Section 51. Section 582.26, Florida Statutes, is repealed.
Section 52. Section 582.331, Florida Statutes, is repealed.
Section 53. Section 582.34, Florida Statutes, is repealed.
Section 54. Section 582.35, Florida Statutes, is repealed.
Section 55. Section 582.36, Florida Statutes, is repealed.
Section 56. Section 582.37, Florida Statutes, is repealed.
Section 57. Section 582.38, Florida Statutes, is repealed.
Section 58. Section 582.39, Florida Statutes, is repealed.
Section 59. Section 582.40, Florida Statutes, is repealed.

Section 60. Section 582.41, Florida Statutes, is repealed.
Section 61. Section 582.42, Florida Statutes, is repealed.
Section 62. Section 582.43, Florida Statutes, is repealed.
Section 63. Section 582.44, Florida Statutes, is repealed.
Section 64. Section 582.45, Florida Statutes, is repealed.
Section 65. Section 582.46, Florida Statutes, is repealed.
Section 66. Section 582.47, Florida Statutes, is repealed.
Section 67. Section 582.48, Florida Statutes, is repealed.
Section 68. Section 582.49, Florida Statutes, is repealed.
Section 69. Section 589.26, Florida Statutes, is repealed.
Section 70. Except as otherwise expressly provided in this act, this act shall take effect July 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 Appropriations

BILL:	CS/SB 1010
INTRODUCER:	Agriculture Committee and Senator Montford
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Fav/CS**
2.	Blizzard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Blizzard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1010 addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- Designates tupelo honey as the official state honey.
- Changes the procedure to obtain and renew a pest control operator's certificate and eliminates a late charge.
- Changes the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminates the $50 per month late charge for late recertification.
- Adds the term "dietary supplements" to the list of possibly adulterated foods.
- Defines the term "vehicle" to provide clarity to the types of mobile carriers that fall under the department's regulatory authority.
- Adds allergen information labeling requirements to the list of possibly misbranded foods.
- Authorizes the department to sponsor "events" (not just breakfasts, luncheons, or dinners) to promote agriculture and agricultural business products.
- Authorizes the department to secure letters of patent, copyrights, and trademarks on any work products of the department and accordingly to enforce its rights.
- Authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers and duties of the Division of Agricultural Environmental Services.
- Creates an Office of Agriculture Technology Services.

- Removes the requirement for the department to provide administrative staff relating to meetings and office space for the Florida Agriculture Center and Horse Park Authority.
- Specifies the intent of the "Fresh From Florida" marketing brand.
- Amends membership requirements for the Florida Agricultural Promotional Campaign Advisory Council.
- Modifies the reporting period for fertilizer tonnage sales from monthly to quarterly and changes the reporting requirement from 15 days to 30 days following the close of the reporting period.
- Preempts regulatory authority for commercial feed and feedstuff to the department.
- Removes the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. This change provides the department with the flexibility to not have to require an owner to destroy or remove the plant.
- Creates the Grove Removal or Vector Elimination Program.
- Rewrites ch. 582, F.S., to modernize the Soil and Water Conservation Districts' (SWCDs) statutes to reflect the actual functions of the districts.
- Removes obsolete statutory references relating to Watershed Improvement Districts.
- Adds definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are programs which are authorized by federal law.
- Authorizes the department to implement the Farmers' Market Nutrition Program to provide participants in the Supplemental Nutrition Program for Women, Infants, and Children with locally grown fruits and vegetables.
- Requires the department to provide the highest rate of reimbursement to which it is entitled under the federal school breakfast program to a "severe need school".
- Renames the "Florida Farm Fresh Schools Program" to be the "Florida Farm to School Program."
- Eliminates the requirement that each grain dealer report monthly to the department the value of grain it received from producers for which the producers have not received payment.
- Eliminates the Florida Forest Service's power to dedicate its land for use by the public as a park.

The bill has an insignificant impact on state revenues (see Section V. Fiscal Impact Statement); however, the bill will have a significant impact on state expenditures relating to the creation of the Grove Removal or Vector Elimination Program created in section 21.

II. Present Situation:

This section topically describes the present situation and the bill's impact on each. See Section III., for a section-by section analysis of the bill's provisions.

Tupelo Honey

The Legislature has not designated an official state honey. Pure Tupelo honey is commercially produced in only three river valleys in the world – the Ogeechee, the Apalachicola, and the

Chattahoochee River Basins, which are all located in northwest Florida and Southeast Georgia. The bill designates tupelo honey as the official state honey.

Pest Control Operator's Certification Application Fee

Each location of each licensed pest control business must have a certified operator in charge that is registered with the Department of Agriculture and Consumer Services (department).[1] This person must be certified for the particular category of pest control engaged in at that location and may be in charge of one or more categories if they are certified in those categories.[2] To become a certified operator, an individual must pass an examination and satisfy specified education and experience requirements.[3]

Currently, persons seeking this certification pay $300 to take the exam.[4] After the individual has passed the exam, he or she must then receive an original certificate before engaging in pest control work.[5] To obtain the original certificate, the individual must pay an additional $150 issuance fee.[6] These requirements cause the department to process an additional, repetitive application and to collect an additional fee. Improvements in on-line processing capability have eliminated the need for this process and can improve the speed with which applicants can obtain their certificate. According to the department, while there will be a negative fiscal impact, there will also be decreased costs and administrative burdens for processing the application for initial certification.

Limited Certification for Urban Landscape Commercial Fertilizer Application

Section 482.1562, F.S., outlines the application requirements to receive a limited urban landscape commercial fertilizer certificate. Renewals are required every four years. For those who hold a limited license, recertification applications must be submitted 90-days prior to expiration of the current license. If the renewal application is not received 60 days prior to the expiration date, a late fee of $50 is assessed in addition to the $25 renewal fee. In order to renew a limited commercial fertilizer certificate, the cost may be as much as $75. A new license is $25. The bill removes the late fee and allows certificate holders 30 days to renew their licenses. This process is consistent with other certifications under ch. 482, F.S.

Florida Food Safety Act

The Florida Food Safety Act is intended to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and

[1] Section 482.111(6)(a), F.S.
[2] Id.
[3] Section 482.132, F.S.
[4] Section 482.141, F.S.; Rule 5E-14.123(4), F.A.C.
[5] Section 482.111, F.S.
[6] Id.; Rule 5E-14.132(3), F.A.C.

- Promote uniform administration and enforcement of federal and state food safety laws.[7]

The bill proposes adoption by reference of federal law (21 USC 321) which details information about dietary supplements or ingredients. The changes proposed add dietary supplements to the list of foods that could possibly be adulterated. Additionally, the bill sets forth criteria to determine if the supplement is adulterated. Dietary supplements have historically been regulated as a food item and are defined as such in federal law. The expansive growth of such products in the last decade, combined with a lack of understanding by many consumers and producers that supplements and supplement ingredients are food products, has created considerable confusion in the regulation of such products. The department is seeking to clarify its ongoing regulation of these products through definition of the product and inclusion of dietary supplements.

The department currently has authority to inspect vehicles which transport food products. However, the various modes of transportation are not clearly identified. Adding the term "vehicle" to the list of definitions will provide clarity around the types of mobile carriers that fall under the department's regulatory authority.

The department's federal partners recognize allergens as a critical food safety issue and have created regulations for such. Section 500.11, F.S., defines what constitutes misbranded food; however, the language is incomplete and/or inconsistent with federal law in 21 U.S.C. 343. The department recommends adoption by reference of federal law, 21 U.S.C. 343 (w) (1) (a) and (b), which includes labeling requirements for allergen information. Such requirements will better protect consumers by requiring appropriate labeling of foods containing known allergens.

Powers and Organization of the Department of Agriculture and Consumer Services

The Legislature has granted the department authority to regulate and promote Florida agriculture, protect the environment, safeguard consumers, and ensure the safety of food. The department has 13 divisions and five offices that establish rules for the state's animal, aquaculture, forestry and produce industries, license producers, the state's agribusiness marketing needs, oversight of emergency preparedness, and law enforcement efforts covering the agriculture industry. In addition to its agricultural duties, the department regulates various consumer service businesses, including motor vehicle repair shops, charitable organizations, dance studios, pawnshops, telemarketers, and several others. The bill repeals certain department authority and duties that are obsolete and updates others to allow the department to more effectively carry out its duties.

Pest Control Trust Fund

Section 482.2401, F.S., requires all moneys collected or received by the department under chapter 482, F.S., to be deposited into the Pest Control Trust Fund. The department indicates that current language restricts the use of funds to carry out the provisions of ch. 482, F.S., because it prevents resources funded in ch. 482, F.S., from being used to conduct work for other programs. This is problematic when functions across programs are combined within a work unit, such as licensing or inspections. Prior to the reorganization of the Division of Agriculture Environmental Services (AES), the work units were separate for each statutory area. The re-organization

[7] Section 500.02, F.S.

streamlined these units. The bill authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the responsibilities of the Division of Agricultural Environmental Services (set forth in s. 570.44, F.S.), not just the Structural Pest Control Act (ch. 482, F.S.). The authority of the Division of Agricultural and Environmental Services includes state mosquito control program coordination, agricultural pesticide registration, testing and regulation, and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2019.

Office of Agriculture Technology Services

Currently, the Division of Administration is responsible for "providing electronic data processing and management information systems support for the department." The bill would create an Office of Agriculture Technology Services as a stand-alone office under the supervision of a senior manager within ch. 570, F.S. This change paves the way for continued implementation of the department's information technology strategic plan.

Florida Agriculture Center and Horse Park

In 1994, the Florida Legislature created the Florida Agriculture Center and Horse Park (Florida Horse Park) in order to provide a unique tourist experience for visitors and Florida residents.[8] The Florida Horse Park is situated on 500 acres that are located south of Ocala. Numerous events occur at the Florida Horse Park throughout the year including rodeos, dressage, polo, obstacle challenges, dog shows, and trail rides.[9] The Florida Agriculture Center and Horse Park Authority (Authority), a twenty-one member group appointed by the Commissioner of Agriculture, oversees the management of the park.[10] The department is currently required to provide administrative and staff support services for the meetings of the Authority and provide suitable space in the offices of the department for Authority's meetings and storage of the Authority's records.[11] The bill revises these requirements so that the department may provide them, but is not required to do so.

Florida Agricultural Promotion Campaign

The department is authorized to establish and coordinate the Florida Agricultural Promotional Campaign (FAPC), also known as the "Fresh From Florida" campaign.[12] This campaign is intended to increase consumer awareness and to expand the market for Florida's agricultural products.[13] Florida agricultural producers may voluntarily join the FAPC. FAPC members may use the "Fresh From Florida" logos, participate in industry trade shows at a reduced cost, receive point-of-purchase materials, have access to trade leads, and receive the "Fresh From Florida" magazine and industry newsletter. Additionally, members of the FAPC can tie into supermarket promotions that feature Florida products in newspaper and store circular advertisements, and

[8] Section 570.681, F.S.
[9] Florida Agricultural Center and Horse Park Authority, *Welcome to the Florida Horse Park*, http://flhorsepark.com/ (last visited December 21, 2015).
[10] Section 570.685, F.S.
[11] Section 570.685(4)(b), F.S.
[12] Section 571.24, F.S.
[13] Section 571.22, F.S.

receive a farm sign customized with the member's business name.[14] The bill would clarify the intent of the marketing brand to avoid misconception that the brand is indicative of inspection for food safety purposes and to decrease the possibility of liability to the department. It makes clear that the department is not warranting safety of products by use of the brand. These changes will clarify intent that the FAPC is only providing a marketing program aimed at promoting department brands, including the "Fresh From Florida" program.

Commercial Feed and Feedstuff

"Commercial feed" is all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans.[15] "Feedstuff" is edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.[16] The department has indicated that it, as well as local governments, if they are inclined to, are authorized to regulate commercial feed and feedstuff for quality, safety, labeling requirements, and standards. At present, there is no regulation of animal feed and feedstuff through local ordinances. The federal Food and Drug Administration is currently promulgating rules which would bring the manufacture and distribution of commercial livestock feed and ingredients to a standard of sanitation safe for both human handling and animal consumption through the Food Safety Modernization Act. The bill would clarify the department's preemptive authority to regulate, inspect, sample, and analyze any commercial feed and feedstuff to eliminate potential duplication of regulation.

Removal and Destruction of Infected and Infested Plants

The Division of Plant Industry must order the removal and destruction of any plant or plant product infested or infected with plant pests or noxious weeds.[17] The division may take this action in order to stop the introduction and dissemination of plants or pests that may threaten Florida's agriculture industry. The division provides written notice to the owner or the person in charge of the premises when the department finds an infested or infected plant or plant product. Within ten days of the notice, the owner or person in charge must treat as directed or remove and destroy the infested or infected plant or plant product. If the owner or person in charge does not, the department may treat as directed or remove and destroy the infested or infected plant or plant product.[18] The bill would create an exception from the destruction requirement for plant or plant products infested with pests or noxious weeds that are widely established in Florida and not regulated. According to the department, there are times when noxious plants, plant pests, or plant diseases are well established in Florida and are not under a department eradication or control program. The bill provides the department with flexibility if the situation does not justify action to eliminate or otherwise mitigate the plant pest or noxious weed.

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[14] Florida Department of Agriculture and Consumer Services, *Join "Fresh From Florida,"* http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Join-Fresh-From-Florida (last visited December 21, 2015).
[15] Section 580.031(2), F.S.
[16] Section 580.031(10), F.S.
[17] Section 581.181(1), F.S.
[18] Section 581.181(2), F.S.

Citrus Greening

Huanglongbing, citrus greening, is thought to be caused by the bacterium, *Candidatus* Liberibacter asiaticus. Citrus greening has seriously affected citrus production in a number of countries in Asia, Africa, the Indian subcontinent and the Arabian Peninsula, and was discovered in July 2004 in Brazil. Wherever the disease has appeared, citrus production has been compromised with the loss of millions of trees. In August 2005, the disease was found in the south Florida region of Homestead and Florida City. Since that time, citrus greening has been found in commercial and residential sites in all counties with commercial citrus.[19] In these areas, citrus crops have been seriously threatened or even completely destroyed. Primary disease symptoms include leaf yellowing or blotchy mottling of leaves; lopsided and bitter fruit; fruit that remains green even when ripe; twig dieback; and stunted, sparsely foliated trees that may bloom off season.[20] When dying groves and unmaintained properties are abandoned by property owners who have not removed the diseased trees, the properties become breeding grounds for citrus greening to spread to neighboring healthy groves. The bill creates the Grove Removal or Vector Elimination Program for the removal or destruction of abandoned citrus groves in order to eliminate the material harboring the citrus greening and spread of the disease.

Soil and Water Conservation Districts

Faced with the problems of the Dust Bowl in the 1930's, President Franklin D. Roosevelt signed the Soil Conservation Act of 1935, which authorized the Secretary of Agriculture to make payments and grants of aid to support approved soil and water conservation measures. The Soil Conservation Service addressed the challenge by setting up a number of large-scale demonstration projects around the country. Although these projects were successful, this approach was not far-reaching enough. It was not only costly and slow to achieve the desired results, but it lacked grass-roots support and participation and did not provide long-lasting conservation treatment. It was recognized that a local organization was necessary through which conservation could be accomplished. In 1937, a model Soil Conservation District Law was developed for consideration by each of the states. Along with a letter from President Roosevelt, this model enabling act was sent to each of the state governors, suggesting that farmers and ranchers be granted the authority to establish districts specifically for conservation of soil and water resources.[21]

Florida adopted much of the model law in 1937.[22] The Legislature recognized farms, forests, and grazing lands as among Florida's basic assets in need of protection from improper land use techniques that cause erosion.[23] It found that erosion reduced the productivity of land, harmed water resources, injured wildlife, caused flooding, and destroyed infrastructure.[24] Thus, corrective measures were required to prevent erosion and conserve, develop, and utilize soil and

[19] *See* http://www.crec.ifas.ufl.edu/extension/greening/index.shtml, (last visited January 11, 2012).
[20] *See* http://www.hungrypests.com/faqs/citrus-greening.php, (last visited January 11, 2012).
[21] *United States Department of Agriculture*, http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/rca/?cid=nrcs143_014208 (last visited December 21, 2015).
[22] Chapter 18144, 1937, Laws of Florida.
[23] Section 582.02, F.S.
[24] Section 582.03, F.S.

water resources.[25] The Legislature intended for soil and water conservation districts (SWCDs) to control and prevent soil erosion, prevent floodwater and sediment damage, further conservation, development, and utilization of soil and water resources, preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of Florida.[26] Currently there are 58 SWCDs in Florida. The bill amends ch. 582, F.S., to eliminate obsolete powers and duties relating to the soil and water conservation districts that are obsolete or exercised by other arms of government.

School Nutrition Program

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946.[27] In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs. Chapter 595, F.S., authorizes the department to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.[28]

Schools must apply through the department and complete certain requirements prior to the operation of a school nutrition program.[29] Once approved, the department reimburses the schools for each lunch and breakfast meal served, provided they meet established state and federal regulations. Chapter 595, F.S., does not contain definitions for "school breakfast program," "summer nutrition program," or "universal school breakfast program." The bill adds these definitions to clarify the meaning and usage of these terms both in statute and in rule and to specify that they are the programs authorized by federal law. The department administers more than one United States Department of Agriculture summer nutrition program. The bill amends the definition of "summer nutrition programs" to specify that certain requirements apply to all summer nutrition programs.

Currently, the department must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. The bill clarifies that the department does not just make efforts to, but actually ensures through its processes and procedures, that all eligible severe need schools receive the higher rate of reimbursement. This change will have no economic or substantive effect on any interest groups or stakeholders and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law. Further, the department may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program.

[25] Section 582.04, F.S.
[26] Section 582.05, F.S.
[27] *See* http://www.fns.usda.gov/nslp/national-school-lunch-program-nslp
[28] Section 595.403, F.S.
[29] Requirements found in s. 595.405, F.S.

There is no restriction on when or for which program the funds may be advanced. The bill also clarifies that the department will only advance funds when requested by sponsors of the Summer Food Service Program.

Florida Farm to Schools Program

Section 595.406, F.S., provides for implementation of the Florida Farm Fresh Schools Program. The program was instituted in 2010 to require the Florida Department of Education to work with the department to increase the presence of Florida-grown products in schools. When the administration of the school nutrition programs was transferred to the department, this program became part of the Florida Farm to School Program, which was already being administered by the department. The bill replaces all references to the "Florida Farm Fresh Schools Program" with the "Florida Farm to School Program." This allows for consistent messaging and marketing around the department's efforts as stated in the statute. Further changes will allow the department to recognize those school districts who have purchased ten percent of the food they serve under the Florida Farm to School Program.

Children's Summer Nutrition Program

Section 595.407, F.S., requires all school districts to develop a plan to sponsor a summer nutrition program to operate within five miles of at least one elementary school where 50 percent or more of the students are eligible for free or reduced prices meals for 35 consecutive days, and also within 10 miles of each elementary school where 50 percent or more of the students are eligible for free or reduced-price meals. The bill specifies that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades K-5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to the department, interpretation of this statute has varied greatly. This change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate. The bill removes the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. This allows school districts to exclude holidays and weekends.

Food and Nutrition Services Trust Fund

The Food and Nutrition Services Trust Fund was created for deposit of revenue and disbursements of Federal Food and Nutrition funds received by the department. In s. 595.601, F.S., the authorizing statute for this trust fund is incorrectly cited. Because the Child Nutrition Programs and Food Distribution Programs were housed in separate agencies, federal funding for these programs is currently maintained separately in the Food and Nutrition Services Trust Fund and the Federal Grants Trust Fund. Correcting this reference in s. 595.601, F.S., will direct all future allocations of federal funding into the Food and Nutrition Services Trust Fund and create better efficiency.[30]

[30] Analysis by the Department of Agriculture and Consumer Services for SB 1010, p.16 (December 11, 2015).

Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

Currently, any agricultural dealer who is engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative is required to obtain a bond or certificate of deposit (CD), as required in s. 604.20(1) F.S. If a CD is the chosen form of security, the dealer is required to furnish the department the CD or a CD receipt, a bank's acknowledgement letter, and an assignment of CD. The bill eliminates the need to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. This requirement is unnecessary because issuance of the certificate of deposit is acknowledgement that the agreement has been properly recorded.

Each grain dealer must report to the department monthly the value of grain it received from producers for which the producers have not received payment. This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers. The bill eliminates the requirement that each grain dealer report monthly to the department, as only three of the four licensed dealers are required to do so. The dealers will continue to be licensed and bonded which allows the department to request information from dealers in the event of a complaint or suspected malpractice.

III. Effect of Proposed Changes:

Section 1 creates s. 15.0521, F.S., to designate tupelo honey as the official state honey.

Section 2 amends s. 482.111, F.S., to eliminate the initial certification fee and associated application deadlines for pest control operator applicants.

Section 3 amends s. 482.1562, F.S., to provide renewal clarification for limited certification for urban landscape commercial fertilizer application and to remove a $50 per month late fee. Application for recertification must be submitted four years after the date of issuance.

Section 4 amends s. 500.03, F.S., to revise the definition of the term "food" to include dietary supplements. It also adds a definition for the term "vehicle" in order to recognize the various modes of transportation used by service food establishments and to be consistent with the federal rules implementing the Food Safety Modernization Act. Currently, the Florida Food Safety Act does not define the term.

Section 5 amends s. 500.10, F.S., to include foods transported under certain conditions to be adulterated. The change also adds dietary supplements in the list of foods that could possibly be adulterated and sets forth criterial to determine if it is adulterated.

Section 6 amends s. 500.11, F.S., to adopt by reference federal law which includes labeling requirements for allergen information.

Section 7 amends s. 570.07, F.S., to authorize the Department of Agriculture and Consumer Services (department) to sponsor "events," in addition to trade breakfasts, luncheons, and dinners to promote agriculture and agricultural business products. It also authorizes the department to secure letters of patent, copyrights, and trademarks on any work product of the department and accordingly to enforce its rights.

Section 8 amends s. 570.30, F.S., to remove electronic data processing and management information systems support as a duty for the department's Division of Administration.

Section 9 amends s. 570.441, F.S., to authorize the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers and duties of the Division of Agricultural Environmental Services. This subsection expires June 30, 2019.

Section 10 amends s. 570.53, F.S., to remove duties associated with issuing Agriculture Dealer's Licenses from the duties of the Division of Marketing and Development.

Section 11 amends s. 570.544, F.S., to move issuance of Agriculture Dealer's Licenses from the Division of Marketing and Development to the Division of Consumer Services, which already issues several other licenses. It also requires the department, rather than a specific division, to regulate Live Stock Markets.

Section 12 creates s. 570.68, F.S., to create the Office of Agriculture Technology Services to provide electronic data processing and agency information technology services to the department.

Section 13 amends s. 570.681, F.S., to clarify legislative findings with regard to the Florida Agriculture Center and Horse Park.

Section 14 amends s. 570.685, F.S., to authorize the department to provide staff, meeting space and records storage space for the Florida Agriculture Center and Horse Park Authority.

Section 15 amends s. 571.24, F.S., to clarify the intent of the Florida Agricultural Promotional Campaign as a marketing program. It removes an obsolete provision relating to the designation of a Division of Marketing and Development employee as a member of the Advertising Interagency Coordinating Council.

Section 16 amends s. 571.27, F.S., to remove obsolete provisions relating to the department's authority to adopt rules related to negotiating and entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign.

Section 17 amends s. 571.28, F.S., to change the membership criteria for the Florida Agricultural Promotional Campaign Advisory Council. This change would allow members to be selected without regard for a specific number from each category of business, but rather an overall representation of the major business components important to the business of agriculture.

Section 18 amends s. 576.041, F.S., to change fertilizer reporting requirements. This would take advantage of the department's web-based reporting tool and align Florida's tonnage reporting

requirement with other states, where reporting is quarterly. In addition, the grace period in which reports must be submitted after the reporting period would be extended from 15 to 30 days. By moving the reporting period from monthly to quarterly, the potential for licensees to incur penalties for late reporting will decrease and compliance will increase. Reducing the reporting requirement by 66 percent per year will improve customer service, allow staff to be proactive during the four reporting months, and afford them the time to follow up with licensees to ensure compliance with mandated reporting requirements.

Section 19 creates s. 580.0365, F.S., to preempt the regulatory authority for commercial feed and feedstuff to the department in order to eliminate duplication of regulation.

Section 20 amends s. 581.181, F.S., to eliminate the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. With this change, the owner will not be required to destroy or remove the plant within ten days.

Section 21 creates s. 581.189, F.S., to create the Grove Removal or Vector Elimination Program, which is a cost-sharing program for the removal or destruction of abandoned citrus groves to eliminate the material harboring the citrus greening and the vectors that spread the disease. It provides definitions for "abandoned citrus grove," "applicant," "eligible costs," "funded application," and "program." This section authorizes the department to adopt rules for reviewing and ranking applications for cost-share funding and establishes the maximum that an applicant may be awarded in any given fiscal year. It specifies the application process and authorizes the department to deny an application if the applicant has not complied with this section or department rules. Applicants selected for funding must initiate and complete the removal of identified citrus trees in the timeframe specified by department rule or the cost-share funding will be forfeited. The annual awarding of funding through the program is subject to specific legislative appropriations.

Section 22 amends s. 582.01, F.S., to redefine terms relating to soil and water conservation. It eliminates the definition of "administrative officer."

Section 23 amends s. 582.02, F.S., to revise legislative intent concerning soil and water conservation districts (SWCDs). This section emphasizes that the purpose of SWCDs is to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, and protect public lands. It is also to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.

Section 24 amends s. 582.055, F.S., to update the powers and duties of the department in relation to SWCDs to reflect its current practices. This section ensures that the department is authorized to work with SWCDs to receive state and federal assistance. It grants the department the power to create and dissolve SWCDs and to adopt rules to implement this chapter.

Section 25 amends s. 582.06, F.S., to grant the Soil and Water Conservation Council the authority to review requests to create or dissolve a SWCD. It also authorizes the council to

consider and provide a recommendation, at the request of the Governor or a district, as to whether a SWCD supervisor should be removed because of neglect of duty or malfeasance in office.

Section 26 amends s. 582.16, F.S., to revise the procedure used in changing district boundaries so that it is the same as when forming a district.

Section 27 amends s. 582.20, F.S., to modernize language relating to SWCDs and their supervisors. The changes focus more on water and best management practices, and less on erosion, to align with the current practices and missions of the districts. Further changes clarify that districts are authorized to partner with other entities on projects regarding floodwater control or soil and water resources. The bill would also allow a supervisor to ask the Governor to remove a fellow supervisor for neglect of duty.

Section 28 amends s. 582.29, F.S., to revise the terms under which state agencies charged with maintenance and administration of state lands must cooperate with the supervisors of any county-owned or publicly owned lands in the implementation of programs and operations under this chapter.

Section 29 amends s. 595.402, F.S., to add definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that these programs are authorized by federal law.

Section 30 amends s. 595.404, F.S., to authorize the department to implement the Farmers' Market Nutrition Program which would provide participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)[31] with locally grown fruits and vegetables. The program is to be carried out using federal or state funds or funds from any other source. The bill authorizes the department to adopt rules to administer, operate, and enforce the program.

The bill clarifies requirements for the School Nutrition Program. It creates a duty for each school district to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. It specifies that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. This is consistent with the federal requirement in 7 CFR 225.9. This change will have no economic or substantive effect on any interest groups or stakeholders and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law. The bill requires the department to collect and annually publish data from multiple sources on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs. The bill also authorizes the department to enter into agreements with federal or state agencies to coordinate or cooperate in the implementation of nutrition programs.

[31] WIC provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk http://www.fns.usda.gov/wic/women-infants-amd-childen-wic (last visited December 14, 2015).

Section 31 amends s. 595.405, F.S., to replace every instance of the term "school district" with "district school board." It rewrites the provisions of this section, which specifies that each district school board is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. The bill also provides criteria for when a universal school breakfast program must be provided. The reorganizing of the section combines several subsections and removes conflicting and duplicative clauses, so that the section is easier to read, interpret, and apply.

Section 32 amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program." The bill authorizes the department to recognize school districts who purchase at least ten percent of the food they serve from the Florida Farm to School Program.

Section 33 amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades kindergarten through five, not just elementary schools. The bill removes the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends.

Section 34 amends s. 595.408, F.S., to change every instance of the word "commodity" with the word "food" to be consistent with the federal USDA Foods Program.

Section 35 amends s. 595.501, F.S., to remove requirements for corrective action plans from s. 595.405, F.S, and place them within this section. It would require sponsors to complete corrective action plans, required by the department or a federal agency, so that they are in compliance with school food and nutrition service programs. The bill also removes "school district" from the phrase "any person, sponsor, or school district" because the definition of "sponsor" is inclusive of "school districts."[32]

Section 36 amends s. 595.601, F.S., to correct a cross-reference.

Section 37 amends s. 604.21, F.S., to eliminate the requirement that a complainant against an agricultural dealer must file three notarized complaint affidavits with the department. The bill also eliminates the requirement to file an original complaint with the department if the complaint has been submitted electronically.

Section 38 amends s. 604.33, F.S., to remove provisions requiring grain dealers to submit monthly reports. The bill authorizes rather than requires the department to make at least one spot check annually of each grain dealer.

Section 39 repeals s. 582.03, F.S., relating to the consequences of soil erosion.

[32] Section 595.402(5), F.S.

Section 40 repeals s. 582.04, F.S., relating to appropriate corrective measures for soil conservation.

Section 41 repeals s. 582.05, F.S., relating to legislative policy for soil and water conservation.

Section 42 repeals s. 582.08, F.S., relating to additional powers of the department in relation to SWCDs.

Section 43 repeals s. 582.09, F.S., relating to the employment of an administrative officer of soil and water conservation as well as supporting staff.

Section 44 repeals s. 582.17, F.S., relating to the establishment of SWCDs.

Section 45 repeals s. 582.21, F.S., relating to adoption of land use regulations of SWCDs.

Section 46 repeals s. 582.22, F.S., relating to SWCD regulations and the uniformity of their content within a district.

Section 47 repeals s. 582.23, F.S., relating to the duties of supervisors under SWCD regulations.

Section 48 repeals s. 582.24, F.S., relating to boards of adjustment for SWCDs which requires supervisors of any district to hear and consider petitions made by landowners for relief of land use regulations.

Section 49 repeals s. 582.25, F.S., relating to rule adoption and procedures of boards of adjustment.

Section 50 repeals s. 582.26, F.S., relating to petitions made to a board to vary from SWCD regulations.

Section 51 repeals s. 582.331, F.S., relating to the authorization to establish watershed improvement districts within SWCDs.

Section 52 repeals s. 582.34, F.S., relating to petitions for establishment of watershed improvement districts.

Section 53 repeals s. 582.35, F.S., relating to requirements of supervisors when a petition has been filed that include giving notice, conducting hearings on the petition, determinations of need for watershed improvement districts, and definition of boundaries.

Section 54 repeals s. 582.36, F.S., relating to the determination by supervisors that a proposed watershed improvement district is feasible and the referendum that must be held to consider the question of whether the operation of the proposed district is administratively practicable and feasible.

Section 55 repeals s. 582.37, F.S., relating to consideration of results of referendums on establishing watershed improvement districts and to declarations of the approved organization of a district.

Section 56 repeals s. 582.38, F.S., relating to organization of watershed improvement districts, certification to clerks of circuits courts, and limitations on tax rates.

Section 57 repeals s. 582.39, F.S., relating to the establishment of watershed improvement districts that are situated in more than one SWCD.

Section 58 repeals s. 582.40, F.S., relating to changes of district boundaries, additions, detachments, transfers of land from one district to another, and the change of district names.

Section 59 repeals s. 582.41, F.S., relating to the boards of directors of watershed improvement districts.

Section 60 repeals s. 582.42, F.S., relating to officers, agents, and employees that are retained by boards of supervisors of watershed improvement districts. This section of the Florida Statutes also provides for surety bonds for such officers, agents, and employees and requires an annual audit of the accounts of the district.

Section 61 repeals s. 582.43, F.S., relating to the status and general powers of watershed improvement districts.

Section 62 repeals s. 582.44, F.S., relating to watershed improvement districts levying taxes.

Section 63 repeals s. 582.45, F.S., relating to the fiscal powers of a watershed improvement district's governing board.

Section 64 repeals s. 582.46, F.S., relating to additional powers and authorities of watershed improvement districts. Such powers are additional to those of the soil and water conservation district in which the watershed improvement district is situated.

Section 65 repeals s. 582.47, F.S., relating to the requirement that a watershed improvement district must consult with and advise flood control districts to coordinate the work of the districts involved.

Section 66 repeals s. 582.48, F.S., relating to the discontinuance of a watershed improvement district.

Section 67 repeals s. 582.49, F.S., relating to the discontinuance of a soil and water conservation district.

Section 68 repeals s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate its land for use by the public as a park.

Section 69 provides that except as otherwise expressly provided in the bill, the bill takes effect July 1, 2016.

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:

See Private Sector Impact section below.

B. Private Sector Impact:

CS/SB 1010 eliminates the $50 late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on persons who apply commercial fertilizer by eliminating this fee.

The bill eliminates certain financial assurance and licensing requirements for dealers in agricultural products and for grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

The bill also creates an exemption from the destruction requirement for plant or plant products infested with pests or noxious weeds that are widely established in Florida and not regulated by the department. This may have a positive impact on those who own the plant or plant products infested with pests or noxious weeds by not requiring the owners to destroy them.

In addition, the bill eliminates the necessity for a complainant to submit three notarized complaint affidavits when an individual is damaged by an agricultural products dealer. This may have a positive impact on those individuals by eliminating the extra filings and speeding up the complaint process.

C. Government Sector Impact:

Pest Control Operator's Certification Application Fee

The bill appears to have an insignificant negative fiscal impact on state funds because of the elimination of the original certification fee of $150 for pest control certification applicants. The Department of Agriculture and Consumer Services (department) will have decreased revenues in the Pest Control Trust Fund of $76,762 annually. The department has indicated that the impact is expected to be minimal and will be absorbed by the department.[33]

Fee for Limited Certification for Urban Landscape Commercial Fertilizer Application

Eliminating the $50 late fee for a limited certification for urban landscape commercial fertilizer application will have an insignificant negative impact on state government revenues. The fee was first established in ch. 2009-199, Laws of Florida. Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape is required to be certified. The certification is for four years from the date of issuance; therefore, no late fees have been assessed.

Office of Agricultural Technology Services

The bill has an insignificant impact associated with the creation of s. 570.68, F.S., which creates the Office of Agricultural Technology Services, under the supervision of a senior management class employee. Changing the department's current Chief Information Officer from the Regular Class in the Florida Retirement System to the Senior Management Class would result in an additional state retirement contribution of $12,402 from the General Revenue Fund. The department will manage the additional costs within existing salary and benefit resources.

Grove Removal or Vector Elimination (GROVE) Program

Under the provisions of CS/SB 1010, funding of the Grove Removal or Vector Elimination (GROVE) program is subject to specific legislative appropriation. The department's Fiscal Year 2016-2017 legislative budget request includes $1,000,000 in nonrecurring general revenue to fund the GROVE program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[33] Analysis by the Department of Agriculture and Consumer Services for SB 1010, p.19 (December 16, 2015).

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 482.111, 482.1562, 500.03, 500.10, 500.11, 570.07, 570.30, 570.441, 570.53, 570.544, 570.681, 570.685, 571.24, 571.27, 571.28, 576.041, 581.181, 582.01, 582.02, 582.055, 582.06, 582.16, 582.20, 582.29, 595.402, 595.404, 595.405, 595.406, 595.407, 595.408, 595.501, 595.601, 604.21, and 604.33.

This bill creates the following sections of the Florida Statutes: 15.0521, 570.68, 580.0365, and 581.189.

This bill repeals the following sections of the Florida Statutes: 582.03, 582.04, 582.05, 582.08, 582.09, 582.17, 582.21, 582.22, 582.23, 582.24, 582.25, 582.26, 582.331, 582.34, 582.35, 582.36, 582.37, 582.38, 582.39, 582.40, 582.41, 582.42, 582.43, 582.44, 582.45, 582.46, 582.47, 582.48, 582.49, and 589.26.

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 Agriculture on January 11, 2016:
The committee substitute:

- Restores current statute and removes language in the bill that changes the definition of "due notice" with regard to public hearings by soil and water conservation districts. It eliminates the requirement that notification must be published in a newspaper of general circulation seven days in advance of an event.
- Creates the Grove Removal or Vector Elimination Program to help eliminate citrus greening and improve the health of Florida's citrus industry.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/23/2016	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 338 and 339
insert:

Section 7. Section 500.90, Florida Statutes, is created to read:

500.90 Regulation of polystyrene products preempted to department.—The regulation of the use or sale of polystyrene products by entities regulated under this chapter is preempted to the department. This preemption does not apply to local

477236

ordinances or provisions thereof enacted before January 1, 2016, and does not limit the authority of a local government to restrict the use of polystyrene by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the local government for the provision of goods or services, unless such use is otherwise preempted by law.

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

And the title is amended as follows:

Delete line 19

and insert:

misbranded; creating s. 500.90, F.S.; preempting to the department the regulation of the use or sale of polystyrene products by entities regulated under the Florida Food Safety Act; providing applicability; amending s. 570.07, F.S.; revising the

By the Committee on Agriculture; and Senator Montford

575-02016-16 20161010c1

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; creating s. 15.0521, F.S.; designating tupelo honey as the official state honey; amending s. 482.111, F.S.; specifying the requirements for original certification as a pest control operator; specifying the fee for the renewal of a certificate; amending s. 482.1562, F.S.; specifying the deadline for recertification of persons who wish to apply urban landscape commercial fertilizer; providing a grace period for recertification; amending s. 500.03, F.S.; revising the definition of the term "food" to include dietary supplements; defining the term "vehicle"; amending s. 500.10, F.S.; providing additional conditions under which food may be deemed adulterated; amending s. 500.11, F.S.; including failure to comply with labeling relating to major food allergens as a criterion for use in determining whether food has been misbranded; amending s. 570.07, F.S.; revising the department's functions, powers, and duties; amending s. 570.30, F.S.; revising the powers and duties of the Division of Administration; amending s. 570.441, F.S.; authorizing the use of funds in the Pest Control Trust Fund for activities of the Division of Agricultural Environmental Services; providing for expiration; amending s. 570.53, F.S.; revising the powers and duties of the Division of Marketing and Development to remove the enforcement provisions relating to the dealers in agricultural products law; amending s. 570.544, F.S.; revising the duties of the director of the Division of Consumer Services to include enforcement provisions relating to the dealers in

575-02016-16 20161010c1

agricultural products law; creating s. 570.68, F.S.; authorizing the Commissioner of Agriculture to create an Office of Agriculture Technology Services; providing duties of the office; amending s. 570.681, F.S.; revising the legislative findings relating to the Florida Agriculture Center and Horse Park; amending s. 570.685, F.S.; authorizing, rather than requiring, the department to provide administrative and staff support services, meeting space, and record storage for the Florida Agriculture Center and Horse Park Authority; amending s. 571.24, F.S.; clarifying the intent that the Florida Agricultural Promotional Campaign serve as a marketing program; removing an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council; amending s. 571.27, F.S.; removing obsolete provisions relating to the authority of the department to adopt rules for entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign; amending s. 571.28, F.S.; revising the composition of the Florida Agricultural Promotional Campaign Advisory Council; amending s. 576.041, F.S.; revising the frequency with which tonnage reports of fertilizer sales must be made; revising the timeframe for submission of such reports; creating s. 580.0365, F.S.; providing for the preemption of commercial feed and feedstuff regulation; amending s. 581.181, F.S.; providing

applicability of provisions requiring treatment or destruction of infested or infected plants and plant products; creating s. 581.189, F.S.; creating the Grove Removal or Vector Elimination (GROVE) Program; specifying the purpose of the program; defining terms; requiring the department to adopt rules for reviewing and ranking applications for cost-share funding to removal or destroy abandoned citrus groves; establishing per applicant award maximums; specifying that the total funds awarded in a fiscal year cannot exceed the amount specifically appropriated for the program; specifying application requirements; specifying how the department must process applications; specifying that noncompliance will result in forfeiture of cost-share funds; requiring the department to rank and review applications and to conduct a certain inspection; specifying grounds for denial of an application; requiring applicants selected for funding to timely initiate and complete the removal of identified citrus trees in accordance with their respective applications; providing the process for making payments to applicants; authorizing the department to adopt rules; specifying that funding for the program is contingent upon specific appropriation by the Legislature; amending s. 582.01, F.S.; redefining terms relating to soil and water conservation; amending s. 582.02, F.S.; providing legislative intent and findings relating to soil and water conservation districts; providing a statement of

purpose; amending s. 582.055, F.S.; revising the powers and duties of the department; authorizing the department to adopt rules; amending s. 582.06, F.S.; requiring the Soil and Water Conservation Council to accept and review requests for creating or dissolving soil and water conservation districts and to make recommendations to the commissioner; requiring the council to provide recommendations to the commissioner relating to the removal of supervisors under certain circumstances; amending s. 582.16, F.S.; revising how district boundaries may be changed; amending s. 582.20, F.S.; revising the powers and duties of districts and supervisors; amending s. 582.29, F.S.; revising the terms under which certain state agencies must cooperate; amending s. 595.402, F.S.; defining terms relating to the school food and nutrition service program; amending s. 595.404, F.S.; revising the powers and duties of the department with regard to the school food and nutrition service program; directing the department to collect and annually publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs; amending s. 595.405, F.S.; clarifying requirements for the school nutrition program; requiring breakfast meals to be available to all students in schools that serve any combination of grades kindergarten through 5; amending s. 595.406, F.S.; renaming the "Florida Farm Fresh Schools Program" as the "Florida Farm to School Program";

authorizing the department to establish by rule a recognition program for certain sponsors; amending s. 595.407, F.S.; revising provisions of the children's summer nutrition program to include certain schools that serve any combination of grades kindergarten through 5; revising provisions relating to the duration of the program; authorizing school districts to exclude holidays and weekends; amending s. 595.408, F.S.; conforming provisions to changes made by the act; amending s. 595.501, F.S.; requiring certain entities to complete corrective action plans required by the department or a federal agency to be in compliance with school food and nutrition service programs; amending s. 595.601, F.S.; revising a cross-reference; amending s. 604.21, F.S.; deleting a requirement relating to complaints filed by electronic transmission or facsimile; amending s. 604.33, F.S.; deleting provisions requiring grain dealers to submit monthly reports; authorizing, rather than requiring, the department to make at least one spot check annually of each grain dealer; repealing s. 582.03, F.S., relating to the consequences of soil erosion; repealing s. 582.04, F.S., relating to appropriate corrective methods; repealing s. 582.05, F.S., relating to legislative policy for conservation; repealing s. 582.08, F.S., relating to additional powers of the department; repealing s. 582.09, F.S., relating to an administrative officer of soil and water conservation; repealing s. 582.17, F.S.,

relating to the presumption as to establishment of a district; repealing s. 582.21, F.S., relating to adoption of land use regulations; repealing s. 582.22, F.S., relating to district regulations and contents; repealing s. 582.23, F.S., relating to performance of work under the regulations by the supervisors; repealing s. 582.24, F.S., relating to the board of adjustment; repealing s. 582.25, F.S., relating to rules of procedure of the board; repealing s. 582.26, F.S., relating to petitioning the board to vary from regulations; repealing s. 582.331, F.S., relating to the authorization to establish watershed improvement districts within soil and water conservation districts; repealing s. 582.34, F.S., relating to petitions for establishment of watershed improvement districts; repealing s. 582.35, F.S., relating to notice and hearing on petitions, determinations of need for districts, and boundaries; repealing s. 582.36, F.S., relating to determination of feasibility of proposed districts and referenda; repealing s. 582.37, F.S., relating to consideration of results of referendums and declaration of organization of districts; repealing s. 582.38, F.S., relating to the organization of districts, certification to clerks of circuit courts, and limitation on tax rates; repealing s. 582.39, F.S., relating to establishment of watershed improvement districts situated in more than one soil and water conservation district; repealing s. 582.40, F.S., relating to change of district

boundaries or names; repealing s. 582.41, F.S., relating to boards of directors of districts; repealing s. 582.42, F.S., relating to officers, agents, and employees, surety bonds, and annual audits; repealing s. 582.43, F.S., relating to status and general powers of districts; repealing s. 582.44, F.S., relating to the levy of taxes and taxing procedures; repealing s. 582.45, F.S., relating to fiscal powers of a governing body; repealing s. 582.46, F.S., relating to additional powers and authority of districts; repealing s. 582.47, F.S., relating to the coordination between watershed improvement districts and flood control districts; repealing s. 582.48, F.S., relating to the discontinuance of watershed improvement districts; repealing s. 582.49, F.S., relating to the discontinuance of soil and water conservation districts; repealing s. 589.26, F.S., relating to the dedication of state park lands for public use; providing effective dates.

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

Section 1. Effective upon this act becoming a law, section 15.0521, Florida Statutes, is created to read:

15.0521 Official state honey.—Tupelo honey is designated as the official Florida state honey.

Section 2. Subsections (1) and (7) of section 482.111, Florida Statutes, are amended to read:

482.111 Pest control operator's certificate.—

(1) The department shall issue a pest control operator's certificate to each individual who qualifies under this chapter. Before the issuance of the original certification, an individual must have completed an application for examination, paid the examination fee provided for in s. 482.141, and passed the examination. Before engaging in pest control work, each certified operator must be certified as provided in this section. ~~Application must be made and the issuance fee must be paid to the department for the original certificate within 60 days after the postmark date of written notification of passing the examination. During a period of 30 calendar days following expiration of the 60-day period, an original certificate may be issued; however, a late issuance charge of $50 shall be assessed and must be paid in addition to the issuance fee. An original certificate may not be issued after expiration of the 30-day period, without reexamination.~~

(7) The fee for ~~issuance of an original certificate or~~ the renewal of a certificate ~~thereof~~ shall be set by the department but may not be more than $150 or less than $75; however, until rules setting these fees are adopted by the department, the issuance fee and the renewal fee shall each be $75.

Section 3. Subsections (5) and (6) of section 482.1562, Florida Statutes, are amended to read:

482.1562 Limited certification for urban landscape commercial fertilizer application.—

(5) An application for recertification must be made 4 years after the date of issuance ~~at least 90 days before the expiration~~ of the current certificate and be accompanied by:

(a) Proof of having completed the 4 classroom hours of acceptable continuing education required under subsection (4).

(b) A recertification fee set by the department in an amount of at least $25 but not more than $75. Until the fee is set by rule, the fee for certification is $25.

(6) ~~A late renewal charge of $50 per month shall be assessed 30 days after the date the application for recertification is due and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 90 days after the recertification date.~~ Upon expiration or after a grace period ending 30 days after expiration, a certificate may be issued only upon the person reapplying in accordance with subsection (3).

Section 4. Paragraph (n) of subsection (1) of section 500.03, Florida Statutes, is amended, and paragraph (cc) is added to that subsection, to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(n) "Food" includes:

1. Articles used for food or drink for human consumption;

2. Chewing gum;

3. Articles used for components of any such article; ~~and~~

4. Articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims; and

5. "Dietary supplements" as the term is defined in 21

U.S.C. s. 321(ff)(1) and (2).

The term includes any raw, cooked, or processed edible substance; ice; any beverage; or any ingredient used, intended for use, or sold for human consumption.

(cc) "Vehicle" means a mode of transportation or mobile carrier used to transport food from one location to another, including, but not limited to, cars, carts, cycles, trucks, vans, trains, railcars, aircraft, and watercraft.

Section 5. Subsection (1) of section 500.10, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

500.10 Food deemed adulterated.—A food is deemed to be adulterated:

(1)(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which is unsafe within the meaning of s. 500.13(1);

(c) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of 21 U.S.C. s. 346(a) or s. 500.13(1);

(d) If it is or it bears or contains, any food additive

which is unsafe within the meaning of 21 U.S.C. s. 348 or s. 500.13(1); provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. s. 346 or s. 500.13(1), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of s. 500.13, and this paragraph, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity;

(e) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(f) If it has been produced, prepared, packed, transported, or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(g) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

(h) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(5) If a dietary supplement or its ingredients present a significant risk of illness or injury due to:

(a) The recommended or suggested conditions of use on the product label;

(b) The failure to provide conditions of use on the product label; or

(c) It containing an ingredient for which there is inadequate information to provide reasonable assurances that the ingredient does not present a significant risk of illness or injury.

Section 6. Paragraph (m) of subsection (1) of section 500.11, Florida Statutes, is amended to read:

500.11 Food deemed misbranded.—

(1) A food is deemed to be misbranded:

(m) If it is offered for sale and its label or labeling does not comply with the requirements of 21 U.S.C. s. 343(q) or 21 U.S.C. s. 343(w) pertaining to nutrition or allergen information.

Section 7. Subsection (20) of section 570.07, Florida Statutes, is amended, and subsection (44) is added to that section, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(20)(a) To stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products;

(b) To conduct activities that may foster a better understanding and more efficient cooperation among producers, dealers, buyers, food editors, and the consuming public in the promotion and marketing of Florida's agricultural and

agricultural business products; and

(c) To sponsor events, trade breakfasts, luncheons, and dinners and distribute promotional materials and favors in connection with meetings, conferences, and conventions of dealers, buyers, food editors, and merchandising executives that will assist in the promotion and marketing of Florida's agricultural and agricultural business products to the consuming public.

The department is authorized to receive and expend donations contributed by private persons for the purpose of covering costs associated with the above described activities.

(44) In its own name:

(a) To perform all acts necessary to secure letters of patent, copyrights, and trademarks on any work products of the department and enforce its rights therein.

(b) To license, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use of such department work products on a royalty basis or for such other consideration as the department deems proper.

(c) To take any action necessary, including legal action, to protect such department work products against improper or unlawful use or infringement.

(d) To enforce the collection of any sums due to the department for the manufacture or use of such department work products by another party.

(e) To sell any of such department work products and execute all instruments necessary to consummate any such sale.

(f) To do all other acts necessary and proper for the

execution of powers and duties conferred upon the department by this section, including adopting rules, as necessary, in order to administer this section.

Section 8. Subsection (5) of section 570.30, Florida Statutes, is amended to read:

570.30 Division of Administration; powers and duties.—The Division of Administration shall render services required by the department and its other divisions, or by the commissioner in the exercise of constitutional and cabinet responsibilities, that can advantageously and effectively be centralized and administered and any other function of the department that is not specifically assigned by law to some other division. The duties of this division include, but are not limited to:

~~(5) Providing electronic data processing and management information systems support for the department.~~

Section 9. Subsection (4) is added to section 570.441, Florida Statutes, to read:

570.441 Pest Control Trust Fund.—

(4) In addition to the uses authorized under subsection (2), the department may use moneys collected or received under chapter 482 to carry out s. 570.44. This subsection expires June 30, 2019.

Section 10. Subsection (2) of section 570.53, Florida Statutes, is amended to read:

570.53 Division of Marketing and Development; powers and duties.—The powers and duties of the Division of Marketing and Development include, but are not limited to:

~~(2) Enforcing the provisions of ss. 604.15-604.34, the dealers in agricultural products law, and ss. 534.47-534.53.~~

Section 11. Subsection (2) of section 570.544, Florida Statutes, is amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.—

(2) The director shall supervise, direct, and coordinate the activities of the division and shall, under the direction of the department, enforce ss. 604.15-604.34 and ~~the provisions of~~ chapters 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849.

Section 12. Section 570.68, Florida Statutes, is created to read:

570.68 Office of Agriculture Technology Services.—The commissioner may create an Office of Agriculture Technology Services under the supervision of a senior manager. The senior manager is exempt under s. 110.205 in the Senior Management Service and shall be appointed by the commissioner. The office shall provide electronic data processing and agency information technology services to support and facilitate the functions, powers, and duties of the department.

Section 13. Section 570.681, Florida Statutes, is amended to read:

570.681 Florida Agriculture Center and Horse Park; legislative findings.—It is the finding of the Legislature that:

~~(1) Agriculture is an important industry to the State of Florida, producing over $6 billion per year while supporting over 230,000 jobs.~~

(1)~~(2)~~ Equine and other agriculture-related industries ~~will~~ strengthen and benefit each other with the establishment of a statewide agriculture and horse facility.

(2)~~(3)~~ The ~~A~~ Florida Agriculture Center and Horse Park provides ~~will provide~~ Florida with a unique tourist experience for visitors and residents, thus generating taxes and additional dollars for the state.

(3)~~(4)~~ Promoting the Florida Agriculture Center and Horse Park as a joint effort between the state and the private sector allows ~~will allow~~ this facility to use ~~utilize~~ experts and generate revenue from many areas to ensure the success of this facility.

Section 14. Paragraphs (b) and (c) of subsection (4) of section 570.685, Florida Statutes, are amended to read:

570.685 Florida Agriculture Center and Horse Park Authority.—

(4) The authority shall meet at least semiannually and elect a chair, a vice chair, and a secretary for 1-year terms.

(b) The department may provide ~~shall be responsible for providing~~ administrative and staff support services relating to the meetings of the authority and ~~shall provide~~ suitable space in the offices of the department for the meetings and the storage of records of the authority.

(c) In conducting its meetings, the authority shall use accepted rules of procedure. The secretary shall keep a complete record of the proceedings of each meeting showing~~, which record shall show~~ the names of the members present and the actions taken. These records shall be kept on file with the department, and such records and other documents regarding matters within the jurisdiction of the authority shall be subject to inspection by members of the authority.

Section 15. Section 571.24, Florida Statutes, is amended to

read:

571.24 Purpose; duties of the department.—The purpose of this part is to authorize the department to establish and coordinate the Florida Agricultural Promotional Campaign. The campaign is intended to serve as a marketing program for the promotion of agricultural commodities, value-added products, and agricultural-related businesses of this state. The campaign is not a food safety and traceability program. The duties of the department shall include, but are not limited to:

(1) Developing logos and authorizing the use of logos as provided by rule.

(2) Registering participants.

(3) Assessing and collecting fees.

(4) Collecting rental receipts for industry promotions.

(5) Developing in-kind advertising programs.

(6) Contracting with media representatives for the purpose of dispersing promotional materials.

(7) Assisting the representative of the department who serves on the Florida Agricultural Promotional Campaign Advisory Council.

~~(8) Designating a division employee to be a member of the Advertising Interagency Coordinating Council.~~

(8) ~~(9)~~ Adopting rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(9) ~~(10)~~ Enforcing and administering the provisions of this part, including measures ensuring that only Florida agricultural or agricultural based products are marketed under the "Fresh From Florida" or "From Florida" logos or other logos of the Florida Agricultural Promotional Campaign.

Section 16. Section 571.27, Florida Statutes, is amended to read:

571.27 Rules.—The department is authorized to adopt rules that implement, make specific, and interpret ~~the provisions of~~ this part~~, including rules for entering into contracts with advertising agencies for services which are directly related to the Florida Agricultural Promotional Campaign. Such rules shall establish the procedures for negotiating costs with the offerors of such advertising services who have been determined by the department to be qualified on the basis of technical merit, creative ability, and professional competency. Such determination of qualifications shall also include consideration of the provisions in s. 287.055(3), (4), and (5)~~. The department is further authorized to determine, by rule, the logos or product identifiers to be depicted for use in advertising, publicizing, and promoting the sale of Florida agricultural products or agricultural-based products in the Florida Agricultural Promotional Campaign. The department may also adopt rules consistent ~~not inconsistent~~ with ~~the provisions of~~ this part as in its judgment may be necessary for participant registration, renewal of registration, classes of membership, application forms, and ~~as well as~~ other forms and enforcement measures ensuring compliance with this part.

Section 17. Subsection (1) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(1) ORGANIZATION.—There is ~~hereby~~ created within the department the Florida Agricultural Promotional Campaign

Advisory Council, to consist of 15 members appointed by the Commissioner of Agriculture for 4-year staggered terms. The membership shall include: 13 ~~six~~ members representing agricultural producers, shippers, ~~or~~ packers, ~~three members representing agricultural~~ retailers, ~~two members representing~~ agricultural associations, and wholesalers ~~one member representing a wholesaler~~ of agricultural products; 1~~, one~~ member representing consumers;~~,~~ and 1 ~~one~~ member representing the department. Initial appointment of the council members shall be four members to a term of 4 years, four members to a term of 3 years, four members to a term of 2 years, and three members to a term of 1 year.

Section 18. Subsection (2) of section 576.041, Florida Statutes, is amended to read:

576.041 Inspection fees; records.—

(2) Before the distribution of a fertilizer, each licensee shall make application upon a form provided by the department to report quarterly ~~monthly~~ the tonnage of fertilizer sold in the state and make payment of the inspection fee. The continuance of a license is conditioned upon the applicant's:

(a) Maintaining records and a bookkeeping system that will accurately indicate the tonnage of fertilizer sold by the licensee; and

(b) Consent to examination of the business records and books by the department for a verification of the correctness of tonnage reports and inspection fees. Tonnage reports of sales and payment of inspection fee shall be made quarterly using the department's regulatory website or ~~monthly~~ on forms furnished by the department and submitted within 30 days following the close

of the reporting period ~~on or before the fifteenth day of the month succeeding the month covered by the reports~~.

Section 19. Section 580.0365, Florida Statutes, is created to read:

580.0365 Preemption of regulatory authority over commercial feed and feedstuff.—It is the intent of the Legislature to eliminate duplication of regulation over commercial feed and feedstuff. Notwithstanding any other law, the authority to regulate, inspect, sample, and analyze commercial feed or feedstuff distributed in this state or to exercise the powers and duties of regulation granted by this chapter, including the assessment of penalties for violation of this chapter, is preempted to the department.

Section 20. Subsection (3) is added to section 581.181, Florida Statutes, to read:

581.181 Notice of infection of plants; destruction.—

(3) This section does not apply to plants or plant products infested with pests or noxious weeds if such pests and weeds are determined to be widely established within the state and are not specifically regulated under rules adopted by the department or under any other provisions of law.

Section 21. Effective upon becoming a law, section 581.189, Florida Statutes, is created to read:

581.189 Grove Removal or Vector Elimination (GROVE) Program.—

(1) There is created within the Department of Agriculture and Consumer Services the Grove Removal or Vector Elimination Program, a cost-sharing program for the removal or destruction of abandoned citrus groves to eliminate the material harboring

the citrus disease Huanglongbing, also known as citrus greening, and the vectors that spread the disease.

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

(a) "Abandoned citrus grove" means a citrus grove that has minimal or no production value and is no longer economically viable as a commercial citrus grove.

(b) "Applicant" means the person who owns an abandoned citrus grove.

(c) "Eligible costs" means the costs, incurred after an application is selected for funding, of the removal or destruction the citrus trees and the elimination of any citrus greening vectors, as described in the removal or destruction plan in the funded application.

(d) "Funded application" means an application selected for cost-share funding pursuant to this section and rules adopted by the department.

(e) "Program" means the Grove Removal or Vector Elimination Program.

(3) The department shall adopt by rule the standards to be used in reviewing and ranking applications for cost-share funding under the program based on the following factors:

(a) The length of time the citrus groves have been abandoned.

(b) Whether the citrus groves are located within a Citrus Health Management Area.

(c) The proximity of the abandoned citrus groves to other citrus groves currently in production.

(4) An applicant may submit multiple applications for the program, but is eligible only for a maximum of $125,000 in

program cost-share funding in a given fiscal year. The department may award to each funded application a cost-share of up to 80 percent of eligible costs. The total amount of cost-share allocated under the program in each fiscal year may not exceed the amount specifically appropriated for the program for the fiscal year.

(5) An applicant seeking cost-share assistance under the program must submit an application to the department by a date determined by department rule. The application must include, at minimum:

(a) The applicant's plan to remove or destroy citrus trees and any citrus greening vectors in the abandoned citrus grove.

(b) An affidavit from the applicant certifying that all information contained in the application is true and correct.

(c) All information determined by rule to be necessary for the department to determine eligibility for the program and rank applications.

(6) If the department determines an application to be incomplete, it may require the applicant to submit additional information within 10 days after such determination is made.

(7) Each fiscal year, the department shall review all complete applications received in accordance with its rules adopted pursuant to subsection (5). For each such complete submitted application, the department must rank the applications in accordance with the factors specified in subsection (3) and, before selecting an application for funding, must conduct an inspection of the abandoned citrus grove that is the subject of the application.

(8) The department may deny an application pursuant to

chapter 120 for failure to comply with this section and department rules.

(9) If an application is selected for funding, the applicant must initiate and complete the removal or destruction of the citrus trees identified in the application within the timeframe specified by department rule. The applicant's failure to initiate and complete the removal or destruction of the identified citrus trees within the time specified by the department results in the forfeiture of the cost-share funding approved based on the application. Upon such occurrence, the department shall notify the next eligible applicant, based upon its ranking of applicants for the fiscal year, of the availability of cost-share funding. Such applicant, upon acceptance, may be awarded cost-share funding pursuant to this section, subject to available program funds.

(10) Upon completion of the removal or destruction of the citrus trees identified in the funded application, the applicant shall present proof of payment of removal or destruction costs to the department. Upon receipt of satisfactory proof of payment and satisfactory proof of the removal or destruction of the trees identified in the funded application, the department may issue payment to the applicant for the previously approved cost-share amount.

(11) The department may adopt rules to implement and administer this section, including an application process and requirements, an application ranking process that is consistent with the factors specified in subsection (3), and the administration of cost-share funding.

(12) The annual awarding of funding through the program is

subject to specific legislative appropriation for this purpose.

Section 22. Subsections (1), (4), (5), (7), and (8) of section 582.01, Florida Statutes, are amended to read:

582.01 Definitions.—Wherever used or referred to in this chapter unless a different meaning clearly appears from the context:

(1) "District" ~~or "soil conservation district"~~ or "soil and water conservation district" means a governmental subdivision of this state, and a body corporate and politic, organized in accordance with the provisions of this chapter, for the purpose, with the powers, and subject to the provisions set forth in this chapter. The term "district," ~~or "soil conservation district,"~~ when used in this chapter, means and includes a "soil and water conservation district." All districts heretofore or hereafter organized under this chapter shall be known as soil and water conservation districts and shall have all the powers set out herein.

(4) "Landowner" or "owner of land" includes any person who holds ~~shall hold~~ legal or equitable title to any lands lying within a district organized under the provisions of this chapter.

(5) "Land occupier" or "occupier of land" includes any person, other than the owner, who is a lessee, renter, or tenant or who is otherwise ~~shall be~~ in possession of land ~~any lands~~ lying within a district ~~organized under the provisions of this chapter, whether as lessee, renter, tenant, or otherwise~~.

(7) "Due notice," in addition to notice required pursuant to the provisions of chapter 120, means notice published at least twice, with an interval of at least 7 days between the two

publication dates, in a newspaper or other publication of general circulation within the appropriate area ~~or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally~~. ~~At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.~~

~~(8) "Administrative officer" means the administrative officer of soil and water conservation created by s. 582.09.~~

Section 23. Section 582.02, Florida Statutes, is amended to read:

582.02 Legislative intent and findings; purpose of districts ~~Lands a basic asset of state~~.—

(1) It is the intent of the Legislature to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, protect public lands, and protect and promote the health, safety, and welfare of the public.

(2) The Legislature finds that the farm, forest, and grazing lands; green spaces; recreational areas; and natural areas of the state are among its ~~the~~ basic assets ~~of the state~~ and that the conservation ~~preservation~~ of these assets ~~lands~~ is in the public interest ~~necessary to protect and promote the health, safety, and general welfare of its people ; improper land use practices have caused and have contributed to, and are now causing and contributing to a progressively more serious~~

~~erosion of the farm and grazing lands of this state by fire, wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the top soil is being burned, washed and blown out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by fire, wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any landowner or occupier to conserve the soil and control erosion upon her or his lands causes destruction by burning, washing and blowing of soil and water from her or his lands onto other lands and makes the conservation of soil and control erosion of such other lands difficult or impossible~~.

(3) The Legislature further finds it necessary that appropriate land and water resource protection practices be implemented to ensure the conservation of this state's farm, forest, and grazing lands; green spaces; recreational areas; and natural areas and to conserve, protect, and properly use soil and water resources.

(4) The purpose of the soil and water conservation districts is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices and to work in conjunction with federal, state, and local agencies in all matters to implement this chapter.

Section 24. Section 582.055, Florida Statutes, is amended

to read:

582.055 Powers and duties of the Department of Agriculture and Consumer Services.—The department has all of the following powers and duties:

(1) To administer ~~The provisions of~~ this chapter ~~shall be administered by the Department of Agriculture and Consumer Services~~.

(2) ~~The department is authorized~~ To receive gifts, appropriations, materials, equipment, lands, and facilities and to manage, operate, and disburse them for the use and benefit of the soil and water conservation districts of the state.

(3) To require ~~The department shall provide for~~ an annual audit of the accounts of receipts and disbursements.

(4) To ~~The department may~~ furnish information and call upon any state or local agencies for cooperation in carrying out the provisions of this chapter.

(5) To offer assistance as may be appropriate to the supervisors of soil and water conservation districts and to facilitate communication and cooperation between the districts.

(6) To seek the cooperation and assistance of the Federal Government and any of its agencies, and of agencies and counties of this state, in the work of such districts, including the receipt and expenditure of state, federal, or other funds or contributions.

(7) To disseminate information throughout the state concerning the activities and programs of the soil and water conservation districts and to encourage the formation of such districts in areas where their organization is desirable.

(8) To create or dissolve a soil and water conservation

district pursuant to this chapter.

(9) To adopt rules, as necessary, to implement this chapter.

Section 25. Subsection (2) of section 582.06, Florida Statutes, is amended to read:

582.06 Soil and Water Conservation Council; powers and duties.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—

(a) The meetings, powers and duties, procedures, and recordkeeping of the Soil and Water Conservation Council shall be conducted pursuant to s. 570.232.

(b) The council shall accept and review requests for creating or dissolving soil and water conservation districts and shall, by a majority vote, recommend to the commissioner by resolution that a district be created or dissolved pursuant to the request or that the request be denied.

(c) At the request of the Governor or a district, the council shall consider and recommend to the Governor the removal or retention of a supervisor for neglect of duty or malfeasance in office.

Section 26. Section 582.16, Florida Statutes, is amended to read:

582.16 Change of ~~Addition of territory to~~ district boundaries ~~or removal of territory therefrom~~.—Requests to increase or decrease the boundaries of ~~Petitions for including additional territory or removing territory within~~ an existing district may be filed with the department ~~of Agriculture and Consumer Services~~, and the department shall follow the proceedings provided for in this chapter to create a district ~~in~~

~~the case of petitions to organize a district shall be observed in the case of petitions for such inclusion or removal~~. ~~The department shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. If the petition is signed by a majority of the landowners of such area, no referendum need be held. In referenda upon petitions for such inclusions or removals, all owners of land lying within the proposed area to be added or removed shall be eligible to vote.~~

Section 27. Section 582.20, Florida Statutes, is amended to read:

582.20 Powers of districts and supervisors.—A soil and water conservation district organized under ~~the provisions of~~ this chapter constitutes ~~shall constitute~~ a governmental subdivision of this state~~,~~ and a public body corporate and politic, exercising public powers, and such district and the supervisors thereof~~, shall~~ have all of the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, studies ~~investigations~~, and research relating to ~~the character of~~ soil and water resources and ~~erosion and floodwater and sediment damages, to the conservation, development and utilization of soil and water resources and the disposal of water, and to the preventive and control measures and works of improvement needed,~~ to publish and disseminate the results of such surveys, studies, and ~~investigations, or~~ research~~,~~ and related ~~to disseminate~~ information. ~~concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate~~

~~any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;~~

(2) To conduct agricultural best management practices demonstration ~~demonstrational~~ projects and projects for the conservation, protection, and restoration of soil and water resources:

(a) Within the district's boundaries;

(b) Within another district's boundaries, subject to the other district's approval;~~, territory within another district's boundaries subject to the other district's approval, or territory~~

(c) In areas not contained within any district's boundaries on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof; or~~, and~~

(d) On any other lands within the district's boundaries, ~~territory~~ within another district's boundaries subject to the other district's approval, or on lands ~~territory~~ not contained within any district's boundaries upon obtaining the consent of the owner and occupiers of such lands or the necessary rights or interests in such lands.~~, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water may be carried out;~~

~~(3) To carry out preventive and control measures and works~~

~~of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in s. 582.04 on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;~~

(3) ~~(4)~~ To cooperate~~,~~ or enter into agreements with~~, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to,~~ any special district, municipality, county, water management district, state or federal agency, governmental or otherwise, or any owner or occupier of lands within the district's boundaries; on lands~~,~~ ~~territory~~ within another district's boundaries, subject to the other district's approval; or on lands~~, or territory~~ not contained within any district's boundaries, to further the purpose of this chapter. ~~in the carrying on of erosion control or prevention operations and works of improvement for flood prevention or the conservation, development and utilization, of soil and water resources and the disposal of water within the~~

~~district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;~~

(4) ~~(5)~~ To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in such property ~~therein~~; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in complying with ~~carrying out the purposes and provisions of~~ this chapter; and to sell, lease, or otherwise dispose of any of its property or interests ~~therein~~ in compliance with ~~furtherance of the purposes and the provisions of~~ this chapter.~~;~~

(5) ~~(6)~~ To make available, on such terms as it shall prescribe, agricultural, engineering, and other machinery, materials, and equipment to landowners and occupiers of land within the district's boundaries, on lands ~~territory~~ within another district's boundaries, subject to the other district's approval~~;~~ or on lands ~~territory~~ not contained within any district's boundaries. Such machinery, materials, and equipment must~~, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will~~ assist such landowners and occupiers of land to conduct ~~carry on~~ operations upon their lands for the conservation and protection of soil and water resources. ~~and for the prevention or control of soil erosion and for flood prevention or the conservation, development and utilization, of~~

~~soil and water resources and the disposal of water;~~

(6)~~(7)~~ To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.~~;~~

(7)~~(8)~~ To provide or assist in providing training and education programs that further the purposes of this chapter.

~~develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; control of artesian wells; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries;~~

~~(9) To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, erosion prevention project, or any project for flood prevention or for the conservation, development and utilization of soil and water~~

~~resources, and the disposal of water, located within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage as agent of the United States or any of its agencies, or of the state or any of its agencies, any soil-conservation, erosion-control, erosion-prevention, or any project for flood-prevention or for the conservation, development, and utilization of soil and water resources, and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries; to act as agent for the United States, or any of its agencies, or for the state or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil-conservation, erosion-control, erosion-prevention, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water within the district's boundaries, territory within another district's boundaries subject to the other district's approval, or territory not contained within any district's boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations;~~

(8) ~~(10)~~ To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as provided in this chapter; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and upon a majority vote of the supervisors of the district, to borrow money and to execute promissory notes and other evidences of indebtedness in connection therewith, and to pledge, mortgage, and assign the income of the district and its personal property as security therefor, the notes and other evidences of indebtedness to be general obligations only of the district and in no event to constitute an indebtedness for which the faith and credit of the state or any of its revenues are pledged~~; to make, amend, and repeal rules and regulations not inconsistent with this chapter to carry into effect its purposes and powers~~.

(9) In coordination with the applicable counties, to use the services of the county agricultural agents and the facilities of their offices, if practicable and feasible. The supervisors may employ additional permanent or temporary staff, as needed, and determine their qualifications, duties, and compensation. The supervisors may delegate to their chair, to one or more supervisors, or to employees such powers and duties as they may deem proper, consistent with this chapter. The supervisors shall furnish to the department, upon request, copies of rules, orders, contracts, forms, and other documents they adopt or employ, and other information concerning their activities which the department may require in the performance of its duties under this chapter.

(10) To adopt rules pursuant to chapter 120 to implement

this chapter.

(11) To request that the Governor remove a supervisor for neglect of duty or malfeasance in office by adoption of a resolution at a public meeting. If the district believes there is a need for a review of the request, the district may request the council, by resolution, to review the request and recommend action to the Governor. ~~As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;~~

(12) ~~No~~ Provisions with respect to the acquisition, operation, or disposition of property by public bodies of this state do not apply ~~shall be applicable~~ to a district organized under this chapter ~~hereunder~~ unless the Legislature ~~shall~~ specifically provides for their application ~~so state~~. The property and property rights ~~of every kind and nature~~ acquired by a ~~any~~ district organized under ~~the provisions of~~ this chapter are ~~shall be~~ exempt from state, county, and other taxation.

Section 28. Section 582.29, Florida Statutes, is amended to read:

582.29 State agencies to cooperate.—Agencies of this state which ~~shall~~ have jurisdiction over, or are ~~be~~ charged with, the administration of any state-owned lands, and agencies of any county~~,~~ or other governmental subdivision of the state~~,~~ which

~~shall~~ have jurisdiction over, or are ~~be~~ charged with the administration of, any county-owned or other publicly owned lands~~, lying within the boundaries of any district organized under this chapter, the boundaries of another district subject to that district's approval, or territory not contained within the boundaries of any district organized under this chapter,~~ shall cooperate to the fullest extent with the supervisors of such districts in the implementation ~~effectuation~~ of programs and operations undertaken by the supervisors under ~~the provisions of~~ this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. ~~The provisions of land use regulations adopted shall be in all respects observed by the agencies administering such publicly owned lands.~~

Section 29. Present subsections (4) and (5) of section 595.402, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and a new subsection (4) and subsections (7) and (8) are added to that section, to read:

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

(4) "School breakfast program" means a program authorized by s. 4 of the Child Nutrition Act of 1966 and administered by the department.

(7) "Summer nutrition program" means one or more of the programs authorized under 42 U.S.C. s. 1761.

(8) "Universal school breakfast program" means a program that makes breakfast available at no cost to all students regardless of their household income.

Section 30. Section 595.404, Florida Statutes, is amended to read:

595.404 School food and other nutrition programs ~~service program~~; powers and duties of the department.—The department has the following powers and duties:

(1) To conduct, supervise, and administer the program that will be carried out using federal or state funds, or funds from any other source.

(2) To conduct, supervise, and administer a Farmers' Market Nutrition Program to provide participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) with locally grown fruits and vegetables. The program is to be carried out using federal or state funds or funds from any other source.

(3)~~(2)~~ To fully cooperate with the United States Government and its agencies and instrumentalities so that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(4)~~(3)~~ To implement and adopt by rule, as required, federal regulations ~~to maximize federal assistance for the program~~.

(5)~~(4)~~ To act as agent of, or contract with, the Federal Government, another state agency, any county or municipal government, or sponsor for the administration of the program, including the distribution of funds provided by the Federal Government to support the program.

(6)~~(5)~~ To provide ~~make a reasonable effort to ensure that any school designated as~~ a "severe need school" ~~receives~~ the highest rate of reimbursement to which it is entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

(7)~~(6)~~ To develop and propose legislation necessary to implement the program, encourage the development of innovative

school food and nutrition services, and expand participation in the program.

(8) ~~(7)~~ To annually allocate among the sponsors, as applicable, funds provided from the school breakfast supplement in the General Appropriations Act based on each district's total number of free and reduced-price breakfast meals served.

(9) ~~(8)~~ To employ such persons as are necessary to perform its duties under this chapter.

(10) ~~(9)~~ To adopt rules covering the administration, operation, and enforcement of the program, and the Farmers' Market Nutrition Program, as well as to implement ~~the provisions of~~ this chapter.

(11) ~~(10)~~ To adopt and implement an appeal process by rule, as required by federal regulations, for applicants and participants under the programs implemented under this chapter ~~program~~, notwithstanding ss. 120.569 and 120.57-120.595.

(12) ~~(11)~~ To assist, train, and review each sponsor in its implementation of the program.

(13) ~~(12)~~ To advance funds from the program's annual appropriation to a summer nutrition program sponsor ~~sponsors~~, when requested, in order to implement ~~the provisions of~~ this chapter and in accordance with federal regulations.

(14) To collect data on food purchased through the programs defined in ss. 595.402(3) and 595.406 and to publish that data annually.

(15) To enter into agreements with federal or state agencies to coordinate or cooperate in the implementation of nutrition programs.

Section 31. Section 595.405, Florida Statutes, is amended

to read:

595.405 School nutrition program requirements ~~for school districts and sponsors~~.—

(1) Each ~~school~~ district school board shall consider the recommendations of the district school superintendent and adopt policies to provide for an appropriate food and nutrition service program for students consistent with federal law and department rules.

(2) Each ~~school~~ district school board shall implement school breakfast programs that make breakfast meals available to all students in each ~~elementary~~ school that serves any combination of grades kindergarten through 5. ~~Universal school breakfast programs shall be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. Each school shall, to the maximum extent practicable, make breakfast meals available to students at an alternative site location, which may include, but need not be limited to, alternative breakfast options as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.~~

(3) Each ~~school~~ district school board must annually set prices for breakfast meals at rates that, combined with federal reimbursements and state allocations, are sufficient to defray costs of school breakfast programs without requiring allocations from the district's operating funds, except if the district school board approves lower rates.

~~(4) Each school district is encouraged to provide universal, free school breakfast meals to all students in each~~

~~elementary, middle, and high school. Each school district shall approve or disapprove a policy, after receiving public testimony concerning the proposed policy at two or more regular meetings, which makes universal, free school breakfast meals available to all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals.~~

(4) ~~(5)~~ Each ~~elementary, middle, and high~~ school operating a breakfast program shall make a breakfast meal available if a student arrives at school on the school bus less than 15 minutes before the first bell rings and shall allow the student at least 15 minutes to eat the breakfast.

(5) Each district school board is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. A universal school breakfast program shall be implemented in each school in which 80 percent or more of the students are eligible for free or reduced-price meals, unless the district school board, after considering public testimony at two or more regularly scheduled board meetings, decides to not implement such a program in such schools.

(6) To increase school breakfast and universal school breakfast program participation, each school district must, to the maximum extent practicable, make breakfast meals available to students through alternative service models as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.

(7) ~~(6)~~ Each ~~school~~ district school board shall annually

provide ~~to all students in each elementary, middle, and high school~~ information prepared by the district's food service administration regarding available ~~its~~ school breakfast programs. The information shall be communicated through school announcements and ~~written~~ notices sent to all parents.

(8) ~~(7)~~ A ~~school~~ district school board may operate a breakfast program providing for food preparation at the school site or in central locations with distribution to designated satellite schools or any combination thereof.

~~(8) Each sponsor shall complete all corrective action plans required by the department or a federal agency to be in compliance with the program.~~

Section 32. Section 595.406, Florida Statutes, is amended to read:

595.406 Florida Farm to School ~~Fresh Schools~~ Program.—

(1) In order to implement the Florida Farm to School ~~Fresh Schools~~ Program, the department shall develop policies pertaining to school food services which encourage:

(a) Sponsors to buy fresh and high-quality foods grown in this state when feasible.

(b) Farmers in this state to sell their products to sponsors, school districts, and schools.

(c) Sponsors to demonstrate a preference for competitively priced organic food products.

(d) Sponsors to make reasonable efforts to select foods based on a preference for those that have maximum nutritional content.

(2) The department shall provide outreach, guidance, and training to sponsors, schools, school food service directors,

parent and teacher organizations, and students about the benefit of fresh food products from farms in this state.

(3) The department may recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program.

Section 33. Subsection (2) of section 595.407, Florida Statutes, is amended to read:

595.407 Children's summer nutrition program.—

(2) Each school district shall develop a plan to sponsor or operate a summer nutrition program to operate sites in the school district as follows:

(a) Within 5 miles of at least one ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 ~~consecutive~~ days between the end of the school year and the beginning of the next school year. School districts may exclude holidays and weekends.

(b) Within 10 miles of each ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals, except as operated pursuant to paragraph (a).

Section 34. Section 595.408, Florida Statutes, is amended to read:

595.408 Food ~~Commodity~~ distribution services; department responsibilities and functions.—

(1)(a) The department shall conduct, supervise, and administer all food ~~commodity~~ distribution services that will be

carried on using federal or state funds, or funds from any other source, or food ~~commodities~~ received and distributed from the United States or any of its agencies.

(b) The department shall determine the benefits each applicant or recipient of assistance is entitled to receive under this chapter, provided that each applicant or recipient is a resident of this state and a citizen of the United States or is an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) The department shall cooperate fully with the United States Government and its agencies and instrumentalities so that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(3) The department may:

(a) Accept any duties with respect to food ~~commodity~~ distribution services as are delegated to it by an agency of the Federal Government or any state, county, or municipal government.

(b) Act as agent of, or contract with, the Federal Government, state government, or any county or municipal government in the administration of food ~~commodity~~ distribution services to secure the benefits of any public assistance that is available from the Federal Government or any of its agencies, and in the distribution of funds received from the Federal Government, state government, or any county or municipal government for food ~~commodity~~ distribution services within the state.

(c) Accept from any person or organization all offers of personal services, food ~~commodities~~, or other aid or assistance.

(4) This chapter does not limit, abrogate, or abridge the powers and duties of any other state agency.

Section 35. Section 595.501, Florida Statutes, is amended to read:

595.501 Penalties.—

(1) If a corrective action plan is issued by the department or a federal agency, each sponsor must complete the corrective action plan to be in compliance with the program.

(2) Any person or~~,~~ sponsor~~, or school district~~ that violates any provision of this chapter or any rule adopted thereunder or otherwise does not comply with the program is subject to a suspension or revocation of their agreement, loss of reimbursement, or a financial penalty in accordance with federal or state law or both. This section does not restrict the applicability of any other law.

Section 36. Section 595.601, Florida Statutes, is amended to read:

595.601 Food and Nutrition Services Trust Fund.—Chapter 99-37, Laws of Florida, recreated the Food and Nutrition Services Trust Fund to record revenue and disbursements of Federal Food and Nutrition funds received by the department as authorized in ss. 595.404 and 598.408 ~~s. 595.405~~.

Section 37. Paragraphs (b) and (d) of subsection (1) and subsection (2) of section 604.21, Florida Statutes, are amended to read:

604.21 Complaint; investigation; hearing.—

(1)

(b) To be considered timely filed, a complaint together with any required affidavits ~~or notarizations~~ must be received by the department within 6 months after the date of sale by electronic transmission, facsimile, regular mail, certified mail, or private delivery service. If the complaint is sent by a service other than electronic mail or facsimile, the mailing shall be postmarked or dated on or before the 6-month deadline to be accepted as timely filed.

(d) A person, partnership, corporation, or other business entity filing a complaint shall submit to the department a ~~the following documents: three~~ completed complaint affidavit ~~affidavits~~ on a form provided by the department which bears ~~with~~ an original signature of an owner, partner, general partner, or corporate officer and an original notarization and which is accompanied by ~~on each affidavit. If the complaint is filed by electronic transmission or facsimile, the original affidavits and original notarizations shall be filed with the department not later than the close of business of the tenth business day following the electronic transmission or facsimile filing. Attached to each complaint affidavit shall be~~ copies of all documents that ~~to~~ support the complaint. Supporting documents may include ~~be~~ copies of invoices, bills of lading, packing or shipping documents, demand letters, or any other documentation to support the claim. In cases in which ~~there are~~ multiple invoices are being claimed, a summary list of all claimed invoices must accompany the complaint.

(2) Upon the filing of a ~~such~~ complaint under this subsection ~~in the manner herein provided~~, the department shall investigate the complaint and ~~matters complained of; whereupon,~~

if it finds that~~, in the opinion of the department,~~ the facts contained in the complaint warrant it ~~such action~~, ~~the department~~ shall serve notice of the filing of complaint on ~~to~~ the dealer against whom the complaint has been filed at the last address of record. Such notice shall be accompanied by a ~~true~~ copy of the complaint. A copy of such notice and complaint shall also be served on any ~~to the~~ surety company~~, if any,~~ that provided the bond for the dealer, and the ~~which~~ surety company shall become party to the action. Such notice of the complaint shall inform the dealer of a reasonable time within which to answer the complaint by advising the department in writing that the allegations in the complaint are admitted or denied or that the complaint has been satisfied. Such notice shall also inform the dealer and the surety company or financial institution of a right to request a hearing on the complaint~~, if requested~~.

Section 38. Section 604.33, Florida Statutes, is amended to read:

604.33 Security requirements for grain dealers.—Each grain dealer doing business in the state shall maintain liquid security, in the form of grain on hand, cash, certificates of deposit, or other nonvolatile security that can be liquidated in 10 days or less, or cash bonds, surety bonds, or letters of credit, that have been assigned to the department and that are conditioned to secure the faithful accounting for and payment to the producers for grain stored or purchased, in an amount equal to the value of grain which the grain dealer has received from grain producers for which the producers have not received payment. The bonds must be executed by the applicant as principal and by a surety corporation authorized to transact

business in the state. The certificates of deposit and letters of credit must be from a recognized financial institution doing business in the United States. ~~Each grain dealer shall report to the department monthly, on or before a date established by rule of the department, the value of grain she or he has received from producers for which the producers have not received payment and the types of transaction involved, showing the value of each type of transaction. The report shall also include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.~~ The department may ~~shall~~ make at least one spot check annually of each grain dealer to determine compliance with the requirements of this section.

Section 39. Section 582.03, Florida Statutes, is repealed.

Section 40. Section 582.04, Florida Statutes, is repealed.

Section 41. Section 582.05, Florida Statutes, is repealed.

Section 42. Section 582.08, Florida Statutes, is repealed.

Section 43. Section 582.09, Florida Statutes, is repealed.

Section 44. Section 582.17, Florida Statutes, is repealed.

Section 45. Section 582.21, Florida Statutes, is repealed.

Section 46. Section 582.22, Florida Statutes, is repealed.

Section 47. Section 582.23, Florida Statutes, is repealed.

Section 48. Section 582.24, Florida Statutes, is repealed.

Section 49. Section 582.25, Florida Statutes, is repealed.

Section 50. Section 582.26, Florida Statutes, is repealed.

Section 51. Section 582.331, Florida Statutes, is repealed.

Section 52. Section 582.34, Florida Statutes, is repealed.

Section 53. Section 582.35, Florida Statutes, is repealed.

Section 54. Section 582.36, Florida Statutes, is repealed.

Section 55. Section 582.37, Florida Statutes, is repealed.

Section 56. Section 582.38, Florida Statutes, is repealed.
Section 57. Section 582.39, Florida Statutes, is repealed.
Section 58. Section 582.40, Florida Statutes, is repealed.
Section 59. Section 582.41, Florida Statutes, is repealed.
Section 60. Section 582.42, Florida Statutes, is repealed.
Section 61. Section 582.43, Florida Statutes, is repealed.
Section 62. Section 582.44, Florida Statutes, is repealed.
Section 63. Section 582.45, Florida Statutes, is repealed.
Section 64. Section 582.46, Florida Statutes, is repealed.
Section 65. Section 582.47, Florida Statutes, is repealed.
Section 66. Section 582.48, Florida Statutes, is repealed.
Section 67. Section 582.49, Florida Statutes, is repealed.
Section 68. Section 589.26, Florida Statutes, is repealed.
Section 69. Except as otherwise expressly provided in this act, this act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 1050 (453996)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Regulated Industries Committee; and Senator Brandes
SUBJECT:	Regulated Professions and Occupations
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Caldwell	RI	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
3.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1050 eliminates current business license requirements for certain regulated professions, but licensure requirements for individuals engaged in those professions remain intact. The affected professions are architects, interior designers, asbestos abatement consultants and contractors, and landscape architects.

The bill allows certain activities to be practiced without licensure, including nail polishing, low voltage landscape lighting, and low voltage communication cabling. The bill eliminates licensure and registration requirements for athlete agents, talent agencies, and labor organizations. Licensure of branch offices for yacht and ship brokers is also eliminated.

The bill has a significant negative fiscal impact to the Department of Business and Professional Regulation (DBPR or department) and to the Service Charge to General Revenue (see Section V, Fiscal Impact Statement).

II. Present Situation:

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR or department). There are 12 divisions, which include:

- Administration;
- Alcoholic Beverages and Tobacco;

- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

There are 15 boards and programs established within the Division of Professions,[1] two boards within the Division of Real Estate,[2] and one board within the Division of Certified Public Accounting.[3] The Florida State Boxing Commission (boxing commission) is also assigned to the DBPR for administrative and fiscal accountability purposes only.[4] The department also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[5]

Regulation of professions is limited under Florida law, to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[6] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[7]

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[1] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

[2] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

[3] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

[4] Section 548.003(1), F.S.

[5] Section 455.01(6), F.S.

[6] Section 455.201(2), F.S.

[7] *Id.*

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[8]

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the department as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[9] When a person is authorized to engage in a profession or occupation in Florida, the department issues a "permit, registration, certificate, or license" to the licensee.[10]

In Fiscal Year 2014-2015, the Division of Accountancy had 38,678 licensees, the Division of Real Estate had 330,565 licensees, and the Board of Professional Engineers had 57,756 licensees.[11] In Fiscal Year 2014-2015, there were 415,207 licensees in the Division of Professions,[12] including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.[13]

Sections 455.203 and 455.213, F.S., establish general licensing provisions for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the

[8] Section 455.201(4)(b), F.S.
[9] *See* s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. *See* s. 455.221(1), F.S.
[10] Section 455.01(4) and (5), F.S.
[11] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2014-2015,* http://www.myfloridalicense.com/dbpr/os/documents/FY2014-2015AnnualReportFinal.pdf (last accessed Jan. 31, 2016) at 22.
[12] Of the total 415,207 licensees in the Division of Professions, 22,566 are inactive. *Id*. at 22.
[13] *Id*. at 13.

department must determine by rule the amount of license fees for its profession, based on estimates of the required revenue to implement regulatory laws.[14]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[15] The FCTMH has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction limited to arbitration of election and recall disputes).[16]

Yacht and Ship Broker Branch Office Licenses

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker's Section, a unit of the FCTMH, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.[17]

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.[18] "Each [yacht or ship] broker must maintain a principle place of business in this state and may establish branch offices in the state. A separate license must be maintained for each branch office."[19]

Applicants for a branch office license and renewal pay a $100 fee with a license renewal every two years.[20] There is no requirement on the branch office other than to obtain licensure. Additionally, there are no inspection requirements.

Labor Organizations

Chapter 447, F.S., governs the licensing and regulation of labor organizations, and related business agents in the state. The Division of Regulation within the DBPR oversees the licensing and regulation of labor organizations. The Division of Regulation processes licenses and

[14] Section 455.219(1), F.S.
[15] Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/dbpr/lsc/index.html, (last visited January 8, 2016).
[16] *Id*.
[17] Department of Business and Professional Regulation, *Yacht and ship Brokers; Licensing and Enforcement*, http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html, (last visited on January 12, 2016).
[18] Section 326.004(1), F.S.
[19] Section 326.004(13), F.S.
[20] Rule 61B-60.002, F.A.C.

responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as "[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state."[21]

In Florida, all labor organizations are required to register with the department and all business agents of labor organizations must obtain a license.[22] Business agents are defined as "[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

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

Applicants for a business agent license shall pay $25 fee for licensure and must meet a number of licensure requirements.[24] Labor organization applicants must pay an annual fee of $1.[25]

Talent Agencies

Chapter 468, Part VII, F.S., governs the licensing and regulation of talent agencies in the state. The Division of Professions within the DBPR oversees the licensing and regulation of talent agencies. The Division of Professions processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the talent agency industry.

Individuals are prohibited from owning, operating, soliciting business, or otherwise engaging in or carrying on the occupation of a talent agency in this state unless the person first obtains licensure for the talent agency.[26] A talent agency is defined as "[a]ny person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist."[27]

To qualify for a talent agency license, the applicant must be of good moral character and shall show whether or not the agency, any person, or any owner of the agency is financially interested in any other business of like nature, and if so, shall specify the interests.[28]

[21] Section 447.02(1), F.S.
[22] Section 447.04(2), F.S.
[23] Section 447.02(2), F.S.
[24] Section 447.04(2), F.S.
[25] Section 447.06(2), F.S.
[26] Section 468.403(1), F.S.
[27] Section 468.401, F.S.
[28] Section 468.405, F.S.

At the time of application, applicants for a talent agency license must pay an application fee of $300, an unlicensed activity fee of $5, and an initial licensure fee of $200 if licensed after March 31 of any odd numbered year. Otherwise the initial license fee is $400. Talent agency license holders must pay a biennial renewal fee of $400.[29]

Licensed talent agencies are required to:
- File an itemized schedule of maximum fees, charges, and commissions it intends to charge and collect for its services;[30]
- Pay to the artist all money collected from an employer for the benefit of an artist within five business days after receipt of the money;[31]
- Display a copy of the license conspicuously in the place of business;[32]
- File a bond with the department in the form of a surety for the penal sum of $5,000, which may be drawn upon if a person is aggrieved by the misconduct of the talent agency;[33]
- Maintain records including the application, registration, or contract of each artist, with additional information;[34]
- Provide a copy of the contract to the artist within 24 hours of the contract's execution;[35] and
- Comply with the prohibited acts set forth in s. 468.412, F.S.

Licensed talent agencies are prohibited from:
- Charging the artist a registration fee;[36]and
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, and advertisement, resume service, photography service, school, acting school, workshop, or acting workshop.[37]

Section 468.415, F.S., provides prohibitions against sexual misconduct.

Section 468.413, F.S., provides criminal penalties for:
- Operating a talent agency without a license;
- Obtaining a license through misrepresentation;
- Assigning a license to another individual;
- Relocating a talent agency without notifying the department;
- Failing to provide information on an application regarding related businesses;
- Failing to maintain records;
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop;

[29] Rule 61-19.005, F.A.C.
[30] Section 468.406(1), F.S.
[31] Section 468.406(2), F.S.
[32] Section 468.407(2), F.S.
[33] Section 468.408, F.S.
[34] Section 468.409, F.S.
[35] Section 468.410(3), F.S.
[36] Section 468.410(1), F.S.
[37] Section 468.410(2), F.S.

- Failing to provide a copy of the contract to the artist;
- Failing to maintain a record sheet; and
- Knowingly sending an artist to an employer the licensee knows to be in violation of the laws of Florida or of the United States.

Athlete Agents

Chapter 468, Part IX, F.S., governs the licensing and regulation of athlete agents in the state. The Division of Professions within the DBPR oversees the licensing and regulation of athlete agents. The Division of Professions processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the athlete agent industry.

Individuals are prohibited from practicing as an athlete agent in Florida without first being licensed as an athlete agent.[38] An athlete agent is defined as:

> [A] person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation. This term includes all employees and other persons acting on behalf of an athlete agent who participate in the activities included under this subsection. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.[39]

In order to be licensed, an applicant must be at least 18 years of age, of good moral character, and have completed the application form and remitted an application fee of $500, a licensure fee of $375, and an unlicensed activity fee of $5. Athlete agent license holders must pay a biennial renewal fee of $220.[40]

Licensed athlete agents are required to:
- Comply with specific contract requirements;[41]
- Comply with the prohibited acts;[42] and
- Maintain financial and business records.[43]

[38] Section 468.453(1), F.S.
[39] Section 468.452(2), F.S.
[40] Rule 61-24.004, F.A.C.
[41] Section 468.454, F.S.
[42] Section 468.456, F.S.
[43] Section 468.4565, F.S.

Section 468.45615, F.S., provides criminal penalties for a licensed athlete agent who provides anything of value to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete.[44]

Asbestos Abatement Business Organization

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement in the state. The Asbestos Licensing Unit is a program located under the Division of Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.[45]

A person must be a licensed asbestos contractor in order to conduct asbestos abatement work.[46] A person must be a licensed asbestos consultant in order to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.[47]

If an applicant for licensure as an asbestos consultant or contractor proposed to engage in consulting or contracting as a business organization, such as a corporation or other legal entity, or in any name other than the applicant's legal name, the business organization must be licensed as an asbestos abatement business. Each licensed business organization must have a qualifying agent that is licensed under ch 469, F.S.,[48] and that is qualified to supervise and is financially responsible. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination, and may not engage in the practice of asbestos abatement until it is qualified.

Applicants for an asbestos abatement business license pay an application fee of $300, an unlicensed activity fee of $5, an initial licensure fee of $250, and a biennial renewal fee of $250.[49] There is no requirement on the branch office other than to obtain licensure. Additionally, there are no inspection requirements.

[44] Section. 468.456(1)(f), F.S.
[45] Florida Department of Business and Professional Regulation, *2016 Legislative Bill Analysis*, *Senate Bill 1050*, p. 2, (December 16, 2015).
[46] Section 469.003(3), F.S.
[47] Section 469.003, F.S.
[48] Section 469.006, F.S.
[49] Rule 61E1-3.001, F.A.C.

Nail Painting

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology is a board located within the Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.

A "specialist" is defined as "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."[50] The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."[51]

The term "cosmetologist" is defined as "a person who is licensed to engage in the practice of cosmetology…"[52] The term "cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."[53]

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.[54] All cosmetology and specialty salons are subject to inspection by the department.[55]

To qualify for a specialist license, the applicant must be at least 16 years old, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with the department with the registration fee.[56]

[50] Section 477.013(5), F.S.
[51] Section 477.013(6), F.S.
[52] Section 477.013(3), F.S.
[53] Section 477.013(4), F.S.
[54] Section 477.0263, F.S.
[55] Section 477.025, F.S.
[56] Section 477.0201, F.S.

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least one year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.[57]

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist. The department does not have a separate license for polishing nails.

Architecture Business or Interior Design Organization

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations in the state. The Board of Architecture and Interior Design is a board located under the Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

"The practice of or the offer to practice architecture or interior design by licensees through a corporation, limited liability company, or partnership offering architectural or interior design services to the public, or by a corporation, limited liability company, or partnership offering architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted, subject to the provisions of [ch. 481, Part I, F.S.]."[58] An architecture or interior design business corporation, limited liability company, or partnership, which is offering architecture or interior design service to the public, must obtain a certificate of authorization prior to practicing.[59]

Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of $100, an unlicensed activity fee of $5, and a biennial renewal fee of $125.[60] There is no requirement on the business entity other than to obtain licensure. Additionally, there are no inspection requirements.

Landscape Architecture Business Organization

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture is a board located within the Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

[57] Section 477.019(2), F.S.
[58] Section 481.219(1), F.S.
[59] Section 481.219(2)-(3), F.S.
[60] Rules 61G1-17.001 and 61G1-17.002, F.A.C.

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

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

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of $450, an unlicensed activity fee of $5, and a biennial renewal fee of $337.50.[63] There is no requirement on the business entity other than to obtain licensure. Additionally, there are no inspection requirements.

Low Voltage Communication Cable

Chapter 489, Part II, F.S., governs the licensing and regulation of electrical contractors, alarm system contractors, and certain specialty contractors in the state. The Electrical Contractors' Licensing Board is a board located within the Division of Professions. The Electrical Contractors' Licensing Board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the electrical contracting industry.

The term "electrical contractor" is defined as:

> [A] person who conducts business in the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, appliances, apparatus, raceways, conduit, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, all in compliance with applicable plans, specifications, codes, laws, and regulations. The term means any person, firm, or corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting.[64]

The term "alarm system contractor" is defined as:

[61] Section 481.323(1)(a), F.S.
[62] Section 481.319(1), F.S.
[63] Rule 61G10-12.002, F.A.C.
[64] Section 489.505(12), F.S.

> [A] person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems for compensation, including, but not limited to, all types of alarm systems for all purposes. This term also means any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract; that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of alarm contracting; or that by itself or by or through others engages in the business of alarm contracting.[65]

The term "specialty contractor" as referenced in ch. 489, Part II, F.S., is defined as:

> [A] contractor whose scope of practice is limited to a specific segment of electrical or alarm system contracting established in a category adopted by board rule, including, but not limited to, residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs together with the interrelated parts and supports…[66]

The Electrical Contractors' Licensing Board created a "Limited Energy Systems" specialty, clarifying the scope of the specialty license to include "the installation, repair, fabrication, erection, alteration, addition to, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, conduit, and fiber optics (transmission of light over stranded glass) or any part thereof not to exceed 98 volts, (RMS). The scope of work of this license does not include installation, repair, fabrication, erection, alteration, addition to, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, conduit, that are part of an alarm system."[67]

The act of installing low voltage communication cabling currently falls under the scope of practice of a limited energy systems specialty license, electrical residential contractor license, and alarm systems contractor license. Therefore, at present an individual wishing to do so for compensation is required to obtain one of the listed licenses prior to completing the work.

Section 489.503(14), F.S., provides an exemption from licensure requirements for the selling, installing, repairing, altering, adding, or designing of low voltage communication cabling by employees of cable or communication companies operating under a certificate issued under ch. 364 or ch. 610, F.S., or under a local franchise or right-of-way agreement.

[65] Section 489.505(2), F.S.
[66] Section 489.505(19), F.S.
[67] Rule 61G6-7.001(4), F.A.C.

Low-Voltage Landscape Lighting

The act of installing low voltage landscape lighting systems that plug into existing receptacles currently falls under the scope of practice of a limited energy systems specialty license, electrical residential contractor license, and alarm systems contractor license. Therefore, currently, an individual wishing to do so for compensation is required to obtain one of the listed licenses prior to completing the work.

Burglar Alarm Systems Agents

A licensed electrical or alarm system contractor may hire a burglar alarm system agent to perform elements of alarm system contracting. A burglar alarm systems agent is defined as a person:

- Who is employed by a licensed alarm system contractor or licensed electrical contractor;
- Who is performing duties which are an element of an activity which constitutes alarm system contracting requiring licensure under this part; and
- Whose specific duties include any of the following: altering, installing, maintaining, moving, repairing, replacing, servicing, selling, or monitoring an intrusion or burglar alarm system for compensation.[68]

A licensed electrical or alarm system contractor may not employ a person as a burglar alarm system agent unless that person:

- Is at least 18 years old;
- Has completed a minimum of 14 hours of specific training from a board-approved provider;
- Has not been convicted within the previous three years of a crime directly related to the employment;
- Has not been committed for controlled substance abuse or been found guilty of a crime under chapter 893, F.S. within the previous three years.[69]

Each burglar alarm system agent must receive six hours of continuing education on burglar alarm system installation and repair and false alarm prevention every two years from a board-approved sponsor of training and through a board-approved training course.[70]

III. Effect of Proposed Changes:

Section 1 amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers, in addition to licensure of the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license. No disciplinary orders against branch office licenses were issued in the previous three fiscal years.[71]

[68] Section 489.505(25), F.S.
[69] Section 489.518(1), F.S.
[70] Section 489.518(5), F.S.
[71] S*ee 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 1050,* Dec. 16, 2015 (on file with Senate Committee on Regulated Industries) at 4-5.

Sections 2 through **9** amend the provisions in Part I of ch. 447, F.S., to eliminate the registration and regulation of labor organizations by the Department of Business and Professional Regulation (DBPR or department). Provisions relating to the right to work and strike, recordkeeping, rights of franchise for labor organizations, civil causes of action, criminal penalties, and recognition of federal regulations remain effective.

According to the department, the National Labor Relations Board (NLRB) is active in Florida and provides similar oversight of unions to that of the DBPR. The United States Department of Labor, Office of Labor Management Standards also registers unions. The department issued no disciplinary orders against labor organizations during the three previous fiscal years.[72]

Sections 10 through **23** amend Part VII of ch. 468, F.S., to eliminate the licensing and regulation of talent agencies by the DBPR. The bill maintains the civil and criminal provisions currently provided in ch. 468, Part VII, F.S., and maintains contract and notice requirements related to talent agents.

According to the department, three disciplinary orders were issued against talent agencies in the three previous fiscal years; two involved minor violations for failure to include the talent agency's license number in advertisements. The financial account of the licensing program has been in a perpetual deficit since creation of talent agency licensure in 1986.[73]

Sections 24 through **33** amend Part IX of ch. 468, F.S., to eliminate all licensing requirements for athlete agents. According to the department, no disciplinary orders were issued against athlete agents in the previous three fiscal years.[74] Certain civil and criminal causes of action against athlete agents remain effective.

Sections 34 and **35** amend ch. 469, F.S., to remove the requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license. No disciplinary orders against a licensed asbestos abatement business were issued in the three previous fiscal years. Asbestos abatement contractors must qualify the business organizations they supervise and are liable for the actions of those businesses. Asbestos abatement contractors must inform the department of any change in their relationship with the qualified business, and a qualified business has 60 days to obtain another asbestos abatement contractor to serve as qualifying agent.

Section 36 amends s. 477.0135, F.S., to eliminate registration requirements for persons engaged in nail polishing. According to the department, this service is limited to non-invasive procedures and the use of harmful chemicals is prohibited.

The Board of Cosmetology issued three disciplinary orders against licensed cosmetologists or cosmetology salons for matters involving nail polishing in the three previous fiscal years. Two

[72] *Id.* at 4.
[73] *Id.*
[74] *Id.*

were for unlicensed activity, and one involved a nail specialist practicing with an expired license. None involved injury to a consumer.[75]

Sections 37 through **40** amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. The bill provides that architects and interior designers qualify their business organization with their individual licenses. The bill provides that architects and interior designers must inform the department of any change in their relationship with the qualified business, and the business has 60 days to obtain another qualifying architect or interior designer. The executive director or chair of the Board of Architecture and Interior Design may authorize another registered architect or interior designer employed by the business organization to temporarily service as its qualifying agent for no more than 60 days.

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

According to the department, in the three previous fiscal years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.[76]

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in the three previous fiscal years in cases that did not also involve discipline against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.[77]

Sections 41 through **46** amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and will be liable for the actions of the business organizations they qualify.

The bill repeals the department's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the bill repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed a year to an out-of-state corporation, partnership, or firm.

[75] *Id.*
[76] *Id.*at 5.
[77] *Id.*

The bill provides that a corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect; and
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

The bill provides that landscape architects must inform the department of any change in their relationship with the qualified business, and the business has one month to obtain another qualifying landscape architect. According to the department, the Board of Landscape Architecture and Design issued no disciplinary orders against landscape architecture businesses during the three previous fiscal years.[78]

Section 47 amends s. 489.503, F.S., to exempt from licensure as an electrical or alarm system contractor, those persons engaged in the installation or repair of low voltage or communication cabling. Low voltage cabling is limited to a maximum of 98 volts. Section 489.503, F.S., already exempts from licensure those employed by cable and telephone companies, who engage in the installation, maintenance, repair, etc. of systems relating to the transmission of voice and data. The bill exempts all persons from the licensure requirement, whether or not they are employed by a cable and telephone company. According to the department, the Electrical Contractors' Licensing Board issued no disciplinary orders for such work in the three previous fiscal years.[79]

The bill provides that a person installing low voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation or wiring is exempt from licensure requirements. The proposed exemption does not permit the alteration of a home's internal electrical system. According to the department, the Electrical Contractors' Licensing Board issued no disciplinary orders against licensees providing these services during the three previous fiscal years.[80]

Section 48 amends s. 489.518, F.S., to provide that persons who perform only sales or installation of wireless alarm systems, other than fire alarms, in a single family residence, are not required to complete the 14 hours of training required of burglar alarm system agents. Burglar alarm system agents installing a wireless system are required to be supervised by a properly licensed electrical or alarm system contractor who is responsible for ensuring proper installation of the alarm system. According to the DBPR, the Electrical Contractors Licensing Board issued no disciplinary orders in the three previous fiscal years relating to this supervision requirement.[81]

Section 49 provides the bill takes effect July 1, 2016.

[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1050 eliminates the requirement for several professions to obtain a license in order to practice in the state. According to the Department of Business and Professional Regulation (DBPR or department), licensees will receive the benefit of fee reductions in the amounts shown below:

- Yacht and Ship Brokers - approximately $1,200 in Fiscal Year 2015-2016; $6,100 in Fiscal Year 2016-2017; $2,600 in Fiscal Year 2017-2018; and $6,100 in Fiscal Year 2018-2019.
- Professions (labor organizations, athlete agents, talent agents, and business licenses related to architects, interior designers, landscape architects, and asbestos abatement consultants and contractors) - approximately $231,300 in Fiscal Year 2015-2016; $156,209 in Fiscal Year 2016-2017; $1,029,394 in Fiscal Year 2017-2018, and $156,209 in Fiscal Year 2018-2019.

C. Government Sector Impact:

According to the DBPR,[82] a reduction in state revenue within the Professional Regulation Trust Fund and the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund is anticipated to be $1,589,112 from Fiscal Year 2015-2016 to Fiscal Year 2018-2019 (see table below), with a corresponding reduction of approximately $128,314 in the Service Charge to General Revenue.

[82] *See* February 17, 2016, e-mail from Department of Business and Professional Regulation staff (on file with Senate Appropriations Subcommittee on General Government).

Reductions

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Revenues: License fees	Condominiums (Yacht and Ship Brokers) ($1,200) Professions ($231,300)	Condominiums (Yacht and Ship Brokers) ($6,100) Professions ($156,209)	Condominiums (Yacht and Ship Brokers) ($2,600) Professions ($1,029,394)	Condominiums (Yacht and Ship Brokers) ($6,100) Professions ($156,209)
Expenditures: Surcharge to GR (non-operating)	Condominiums (Yacht and Ship Brokers) ($96) Professions ($18,504)	Condominiums (Yacht and Ship Brokers) ($488) Professions ($12,985)	Condominiums (Yacht and Ship Brokers) ($208) Professions ($82,560)	Condominiums (Yacht and Ship Brokers) ($488) Professions ($12,985)

The effective date of the bill is July 1, 2016. However, the department anticipates revenue and expenditure reductions in Fiscal Year 2015-2016 (see table above) associated with the licensure renewal of athlete and talent agents and yacht and ship branch offices. Currently, the biennial renewals for athlete agents and talent agents are due May 31 during even years. Yacht and Ship branch office licenses are renewed for a period up to two years based on the expiration date of the licensee's associated yacht and ship broker license. In anticipation of the elimination of the licenses and fees provided in the bill, the department contemplates not collecting renewals for these particular licenses in the remaining months prior to the effective date of the bill.

According to the DBPR, changes in licensing and renewal requirements will require programming modifications which can be handled with existing resources.[83] In addition, the elimination and modification of certain licenses and registration will necessitate the repeal or amendment of rules and applications regarding those licenses and registrations, which can be handled with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 326.004, 447.02, 447.09, 468.401, 468.406, 468.408, 468.409, 468.410, 468.412, 468.413, 468.415, 468.451,

[83] *Id*.

468.452, 468.454, 468.45615, 468.4565, 469.006, 469.009, 477.0135, 481.203, 481.219, 481.221, 481.229, 481.303, 481.321, 481.311, 481.317, 481.319, 481.329, 489.503, and 489.518.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, 468.402, 468.403, 468.404, 468.405, 468.407, 468.414, 468.453, 468.4536, 468.456, 468.4561, and 468.457.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on February 17, 2016:
The committee substitute provides the following:

- Reinstates the criminal and civil remedies and corresponding requirements for how talent agents should conduct their business that are provided in current law;
- Removes deregulation provisions related to hair wrappers and body wrappers and reverts to current law regarding the regulation of those professions;
- Allows the executive director or the chair of the Board of Architecture and Interior Design to authorize another registered architect or interior designer employed by the business organization to temporarily serve as its qualifying agent for no more than 60 days. This provision applies when a qualifying architect or interior designer agent, who is the only qualifying agent for the business organization, ceases employment with the business organization;
- Clarifies that the license number for a qualifying agent of a business organization be included in any advertising of the business organization;
- Conforms to changes made in the bill to use the term "business organization" in lieu of "corporation," "limited liability company," "or partnership;" and
- Corrects a title description.

CS by Regulated Industries on February 2, 2016:
The CS deletes the exemption proposed for veterinary acupressure or veterinary massage. It removes joint and several liability of a licensed qualifying agent for a business organization offering architectural or interior design services, for any damages resulting from the actions of the organization. All provisions relating to certificates of authorization for the practice of professional geology and qualification of the organization by active licensed professional geologists in the state were removed from the bill.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete line 515

and insert:

Section 29. Section 468.456, Florida Statutes, is amended to read:

468.456 Prohibited acts.—

(1) Any of the following acts shall be grounds for the civil causes of action ~~disciplinary actions~~ and remedies as provided for in s. 468.4562 ~~subsection (3)~~:

~~(a) A violation of any law relating to the practice as an athlete agent including, but not limited to, violations of this part and chapter 455 and any rules promulgated thereunder~~.

(a) ~~(b)~~ Failure to account for or to pay, within a reasonable time, not to exceed 30 days, assets belonging to another which have come into the control of the athlete agent in the course of conducting business as an athlete agent.

(b) ~~(c)~~ Any conduct as an athlete agent which demonstrates bad faith or dishonesty.

(c) ~~(d)~~ Commingling money or property of another person with the athlete agent's money or property. Every athlete agent shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through the athlete agent.

(d) ~~(e)~~ Accepting as a client a student athlete referred by and in exchange for any consideration made to an employee of or a coach for a college or university located in this state.

(e) ~~(f)~~ Offering anything of value to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete. However, negotiations regarding the agent's fee shall not be considered an inducement.

~~(g) Knowingly providing financial benefit from the licensee's conduct of business as an athlete agent to another athlete agent whose license to practice as an athlete agent is suspended or has been permanently revoked within the previous 5 years~~.

(f) ~~(h)~~ Committing mismanagement or misconduct as an athlete agent which causes financial harm to a student athlete or

college or university.

~~(i) Failing to include the athlete agent's name and license number in any advertising related to the business of an athlete agent. Advertising shall not include clothing or other novelty items.~~

(g) ~~(j)~~ Publishing or causing to be published false or misleading information or advertisements, or giving any false information or making false promises to a student athlete concerning employment or financial services.

(h) ~~(k)~~ Violating or aiding and abetting another person to violate the rules of the athletic conference or collegiate athletic association governing a student athlete or student athlete's college or university.

(i) ~~(l)~~ Having contact, as prohibited by this part, with a student athlete.

(j) ~~(m)~~ Postdating agent contracts.

~~(n) Having an athlete agent certification acted against by a professional athletic club or association.~~

(k) ~~(o)~~ Being employed to illegally recruit or solicit student athletes by being utilized by or otherwise collaborating with a person known to have been convicted or found guilty of, or to have entered a plea of nolo contendere to, a violation of s. 468.45615, regardless of adjudication.

(2) This part does not prohibit an athlete agent from:

(a) Sending to a student athlete written materials provided that the athlete agent simultaneously sends an identical copy of such written materials to the athletic director, or the director's designee, of the college or university in which the student athlete is enrolled or to which the student athlete has

provided a written intent to participate in intercollegiate athletics; and

(b) Otherwise contacting a student athlete, provided that the student athlete initiates the contact with the athlete agent, and the athlete agent gives prior notice, as provided for by rule of the department, to the college or university in which the student athlete is enrolled or to which the student athlete has provided a written intent to participate in intercollegiate athletics.

~~(3) When the department finds any person guilty of any of the prohibited acts set forth in subsection (1), the department may enter an order imposing one or more of the penalties provided for in s. 455.227, and an administrative fine not to exceed $25,000 for each separate offense. In addition to any other penalties or disciplinary actions provided for in this part, the department shall suspend or revoke the license of any athlete agent licensed under this part who violates paragraph (1)(f) or paragraph (1)(o) or s. 468.45615.~~

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

And the title is amended as follows:

Delete lines 66 - 68

and insert:

contract is void and unenforceable; amending s. 468.456, F.S.; providing that certain actions are grounds for civil causes of action and remedies; deleting a provision authorizing the department to impose certain penalties and fines; deleting the requirement to suspend or revoke an athlete agent's

license for certain violations; repealing s. 468.4561, F.S., relating to


453996

576-03720-16

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

A bill to be entitled

An act relating to regulated professions and occupations; amending s. 326.004, F.S.; deleting a requirement that yacht and ship brokers maintain a separate license for each branch office and related fees; amending s. 447.02, F.S.; deleting a definition; repealing s. 447.04, F.S., relating to business agents, licenses, and permits; repealing s. 447.041, F.S., relating to hearings; repealing s. 447.045, F.S., relating to certain confidential information; repealing s. 447.06, F.S., relating to the required registration of labor organizations; amending s. 447.09, F.S.; deleting prohibitions against specified actions; repealing s. 447.12, F.S., relating to registration fees; repealing s. 447.16, F.S., relating to the applicability of ch. 447, F.S.; amending s. 468.401, F.S.; deleting the definitions of the terms "department," "license," and "licensee"; repealing s. 468.402, F.S., relating to the duties of the Department of Business and Professional Regulation; repealing s. 468.403, F.S., relating to licensure and application requirements for owners and operators of talent agencies; repealing s. 468.404, F.S., relating to fees and renewal of talent agency licenses; repealing s. 468.405, F.S., relating to qualification for talent agency licenses; amending s. 468.406, F.S.; deleting the requirement for talent agencies to file


453996

576-03720-16

with the department an itemized schedule of certain fees and an amended or supplemental schedule under certain circumstances; repealing s. 468.407, F.S., relating to license contents and posting; amending s. 468.408, F.S.; deleting a requirement that a talent agency file a bond for each talent agency license; deleting a departmental requirement to approve talent agency bonds; requiring that a bonding company notify the talent agency, rather than notifying the department, of certain claims; amending s. 468.409, F.S.; deleting provisions requiring talent agencies to make specified records readily available for inspection by the department; amending s. 468.410, F.S.; deleting a reference to the department in talent agency contracts; amending s. 468.412, F.S.; revising the requirements for talent agencies to enter in the talent agency records; revising the requirements for talent agencies to post certain laws and rules; revising the information required in talent agency publications; amending s. 468.413, F.S.; deleting provisions relating to criminal violations for failing to obtain or maintain licensure with the department; deleting provisions authorizing the court to suspend or revoke a license; deleting a provision authorizing the court to bring certain actions; repealing s. 468.414, F.S., relating to collection and deposit of fines, fees, and penalties collected by the department; amending s. 468.415, F.S.; deleting a provision authorizing the department to revoke a

license; amending s. 468.451, F.S.; revising legislative intent related to the regulation of athlete agents; reordering and amending s. 468.452, F.S.; deleting the term "department"; repealing s. 468.453, F.S., relating to the licensure of athlete agents; repealing s. 468.4536, F.S., relating to renewal of such licenses; amending s. 468.454, F.S.; revising the information that must be stated in agent contracts; deleting a condition under which an agent contract is void and unenforceable; repealing s. 468.456, F.S., relating to prohibited acts for athlete agents; repealing s. 468.4561, F.S., relating to unlicensed activity and penalties for violations; amending s. 468.45615, F.S.; conforming provisions to changes made by the act; amending s. 468.4565, F.S.; deleting provisions authorizing the Department of Business and Professional Regulation to access and inspect certain records of athlete agents and related disciplinary actions and subpoena powers; repealing s. 468.457, F.S., relating to rulemaking authority; amending s. 469.006, F.S.; requiring that a license be in the name of a qualifying agent rather than the name of a business organization; requiring the qualifying agent, rather than the business organization, to report certain changes in information; conforming provisions to changes made by the act; amending s. 469.009, F.S.; deleting the authority of the department to reprimand, censure, or impose probation on certain business organizations; amending s.

477.0135, F.S.; providing that a license or registration is not required for a person whose occupation or practice is confined solely to adding polish to nails; amending s. 481.203, F.S.; defining the term "business organization"; deleting the definition of the term "certificate of authorization"; amending s. 481.219, F.S.; revising the process by which a business organization obtains the requisite license to perform architectural services; requiring that a licensee or an applicant apply to qualify a business organization under certain circumstances; specifying application requirements; authorizing the Board of Architecture and Interior Design to deny an application under certain circumstances; requiring that a qualifying agent be a registered architect or a registered interior designer under certain circumstances; requiring that a qualifying agent notify the department when she or he ceases to be affiliated with a business organization; prohibiting a business organization from engaging in certain practices until it is qualified by a qualifying agent; authorizing the executive director or the chair of the board to authorize a certain registered architect or interior designer to temporarily serve as the business organization's qualifying agent for a specified timeframe under certain circumstances; requiring the qualifying agent to give written notice to the department before engaging in practice under her or his own name or in affiliation with another business

organization; requiring the board to certify an applicant to qualify one or more business organizations or to operate using a fictitious name under certain circumstances; conforming provisions to changes made by the act; amending s. 481.221, F.S.; requiring a business organization to include the license number of a certain registered architect or interior designer in any advertising; providing an exception; conforming provisions to changes made by the act; amending s. 481.229, F.S.; conforming provisions to changes made by the act; reordering and amending s. 481.303, F.S.; deleting the term "certificate of authorization"; amending s. 481.321, F.S.; revising provisions that require persons to display certificate numbers under certain circumstances; conforming provisions to changes made by the act; amending ss. 481.311, 481.317, and 481.319, F.S.; conforming provisions to changes made by the act; amending s. 481.329, F.S.; conforming a cross-reference; amending s. 489.503, F.S.; revising an exemption from regulation for certain persons; exempting a person who installs certain low-voltage landscape lighting from specified requirements; amending s. 489.518, F.S.; exempting certain persons from initial training for burglar alarm system agents; providing an effective date.

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

Section 1. Subsection (13) of section 326.004, Florida Statutes, is amended to read:

326.004 Licensing.—

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. ~~A separate license must be maintained for each branch office. The division shall establish by rule a fee not to exceed $100 for each branch office license.~~

Section 2. Subsection (3) of section 447.02, Florida Statutes, is amended to read:

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

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

Section 3. Section 447.04, Florida Statutes, is repealed.

Section 4. Section 447.041, Florida Statutes, is repealed.

Section 5. Section 447.045, Florida Statutes, is repealed.

Section 6. Section 447.06, Florida Statutes, is repealed.

Section 7. Subsections (6) and (8) of section 447.09, Florida Statutes, are amended to read:

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

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

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

Section 8. Section 447.12, Florida Statutes, is repealed.

Section 9. Section 447.16, Florida Statutes, is repealed.


453996

576-03720-16

Section 10. Section 468.401, Florida Statutes, is amended to read:

468.401 ~~Regulation of~~ Talent agencies; definitions.—~~As~~ As used in this part ~~or any rule adopted pursuant hereto~~:

(1) "Talent agency" means any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist.

(2) "Owner" means any partner in a partnership, member of a firm, or principal officer or officers of a corporation, whose partnership, firm, or corporation owns a talent agency, or any individual who is the sole owner of a talent agency.

(3) "Compensation" means any one or more of the following:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered by any person conducting the business of a talent agency under this part;

(b) Any money received by any person in excess of that which has been paid out by such person for transportation, transfer of baggage, or board and lodging for any applicant for employment; or

(c) The difference between the amount of money received by any person who furnishes employees, performers, or entertainers for circus, vaudeville, theatrical, or other entertainments, exhibitions, engagements, or performances and the amount paid by him or her to such employee, performer, or entertainer.

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue


453996

576-03720-16

Code or any nonprofit Florida arts organization that has received a grant from the Division of Cultural Affairs of the Department of State or has participated in the state touring program of the Division of Cultural Affairs.

~~(5) "Department" means the Department of Business and Professional Regulation.~~

(5)~~(6)~~ "Operator" means the person who is or who will be in actual charge of a talent agency.

(6)~~(7)~~ "Buyer" or "employer" means a person, company, partnership, or corporation that uses the services of a talent agency to provide artists.

(7)~~(8)~~ "Artist" means a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model.

(8)~~(9)~~ "Person" means any individual, company, society, firm, partnership, association, corporation, manager, or any agent or employee of any of the foregoing.

~~(10) "License" means a license issued by the Department of Business and Professional Regulation to carry on the business of a talent agency under this part.~~

~~(11) "Licensee" means a talent agency which holds a valid unrevoked and unforfeited license issued under this part.~~

Section 11. Section 468.402, Florida Statutes, is repealed.

Section 12. Section 468.403, Florida Statutes, is repealed.

Section 13. Section 468.404, Florida Statutes, is repealed.

Section 14. Section 468.405, Florida Statutes, is repealed.

Section 15. Subsection (1) of section 468.406, Florida Statutes, is amended to read:

468.406 Fees to be charged by talent agencies; rates;

display.—

(1) Each owner or operator of a talent agency shall post ~~applicant for a license shall file with the application~~ an itemized schedule of maximum fees, charges, and commissions that ~~which~~ it intends to charge and collect for its services~~. This schedule may thereafter be raised only by filing with the department an amended or supplemental schedule at least 30 days before the change is to become effective. The schedule shall be posted~~ in a conspicuous place in each place of business of the agency, and the schedule shall be printed in not less than a 30-point boldfaced type, except that an agency that uses written contracts containing maximum fee schedules need not post such schedules.

Section 16. Section 468.407, Florida Statutes, is repealed.

Section 17. Subsection (1) of section 468.408, Florida Statutes, is amended to read:

468.408 Bond required.—

(1) A ~~There shall be filed with the department for each~~ talent agency shall obtain ~~license~~ a bond in the form of a surety by a reputable company engaged in the bonding business and authorized to do business in this state. The bond shall be for the penal sum of $5,000, with one or more sureties ~~to be approved by the department~~, and be conditioned that the talent agency ~~applicant~~ conform to and not violate any of the duties, terms, conditions, provisions, or requirements of this part.

(a) If any person is aggrieved by the misconduct of any talent agency, the person may maintain an action in his or her own name upon the bond of the agency in any court having jurisdiction of the amount claimed. All such claims shall be

assignable, and the assignee shall be entitled to the same remedies, upon the bond of the agency or otherwise, as the person aggrieved would have been entitled to if such claim had not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee.

(b) The bonding company shall notify the talent agency ~~the department~~ of any claim against such bond, and a copy of such notice shall be sent to the talent agency against which the claim is made.

Section 18. Section 468.409, Florida Statutes, is amended to read:

468.409 Records required to be kept.—Each talent agency shall keep on file the application, registration, or contract of each artist. In addition, such file must include the name and address of each artist, the amount of the compensation received, and all attempts to procure engagements for the artist. No such agency or employee thereof shall knowingly make any false entry in applicant files or receipt files. Each card or document in such files shall be preserved for a period of 1 year after the date of the last entry thereon. ~~Records required under this section shall be readily available for inspection by the department during reasonable business hours at the talent agency's principal office. A talent agency must provide the department with true copies of the records in the manner prescribed by the department.~~

Section 19. Subsection (3) of section 468.410, Florida Statutes, is amended to read:

468.410 Prohibition against registration fees; referral.—

(3) A talent agency shall give each applicant a copy of a

contract, within 24 hours after the contract's execution, which lists the services to be provided and the fees to be charged. ~~The contract shall state that the talent agency is regulated by the department and shall list the address and telephone number of the department.~~

Section 20. Section 468.412, Florida Statutes, is amended to read:

468.412 Talent agency regulations; prohibited acts.—

(1) A talent agency shall maintain a record sheet for each booking. This shall be the only required record of placement and shall be kept for a period of 1 year after the date of the last entry in the buyer's file.

(2) Each talent agency shall keep records in which shall be entered:

(a) The name and address of each artist employing such talent agency;

(b) The amount of fees received from each such artist; and

(c) The employment in which each such artist is engaged at the time of employing such talent agency and the amount of compensation of the artist in such employment, if any, and the employments subsequently secured by such artist during the term of the contract between the artist and the talent agency and the amount of compensation received by the artist pursuant thereto.~~;~~ ~~and~~

~~(d) Other information which the department may require from time to time.~~

~~(3) All books, records, and other papers kept pursuant to this act by any talent agency shall be open at all reasonable hours to the inspection of the department and its agents. Each~~

~~talent agency shall furnish to the department, upon request, a true copy of such books, records, and papers, or any portion thereof, and shall make such reports as the department may prescribe from time to time.~~

(3)~~(4)~~ Each talent agency shall post in a conspicuous place in the office of such talent agency a printed copy of this part ~~and of the rules adopted under this part~~. ~~Such copies shall also contain the name and address of the officer charged with enforcing this part. The department shall furnish to talent agencies printed copies of any statute or rule required to be posted under this subsection.~~

(4)(a)~~(5)(a)~~ No talent agency may knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

(b) A talent agency must advise an artist, in writing, that the artist has a right to rescind a contract for employment within the first 3 business days after the contract's execution. Any engagement procured by the talent agency for the artist during the first 3 business days of the contract remains commissionable to the talent agency.

(5)~~(6)~~ No talent agency may publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a talent agency by means of card, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the ~~licensed~~ name~~, department license number,~~ and address of the talent agency and the words "talent agency." No talent agency may give

576-03720-16

any false information or make any false promises or representations concerning an engagement or employment to any applicant who applies for an engagement or employment.

(6) ~~(7)~~ No talent agency may send or cause to be sent any person as an employee to any house of ill fame, to any house or place of amusement for immoral purposes, to any place resorted to for the purposes of prostitution, to any place for the modeling or photographing of a minor in the nude in the absence of written permission from the minor's parents or legal guardians, the character of which places the talent agency could have ascertained upon reasonable inquiry.

(7) ~~(8)~~ No talent agency, without the written consent of the artist, may divide fees with anyone, including, but not limited to, an agent or other employee of an employer, a buyer, a casting director, a producer, a director, or any venue that uses entertainment. For purposes of this subsection, to "divide fees" includes the sharing among two or more persons of those fees charged to an artist for services performed on behalf of that artist, the total amount of which fees exceeds the amount that would have been charged to the artist by the talent agency alone.

(8) ~~(9)~~ If a talent agency collects from an artist a fee or expenses for obtaining employment for the artist, and the artist fails to procure such employment, or the artist fails to be paid for such employment if procured, such talent agency shall, upon demand therefor, repay to the artist the fee and expenses so collected. Unless repayment thereof is made within 48 hours after demand therefor, the talent agency shall pay to the artist an additional sum equal to the amount of the fee.

576-03720-16

(9) ~~(10)~~ Each talent agency must maintain a permanent office and must maintain regular operating hours at that office.

(10) ~~(11)~~ A talent agency may assign an engagement contract to another talent agency licensed in this state only if the artist agrees in writing to the assignment. The assignment must occur, and written notice of the assignment must be given to the artist, within 30 days after the artist agrees in writing to the assignment.

Section 21. Section 468.413, Florida Statutes, is amended to read:

468.413 Legal requirements; penalties.—

(1) ~~Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:~~

~~(a) Owning or operating, or soliciting business as, a talent agency in this state without first procuring a license from the department.~~

~~(b) Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.~~

~~(2)~~ Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

~~(a) Relocating a business as a talent agency, or operating under any name other than that designated on the license, unless written notification is given to the department and to the surety or sureties on the original bond, and unless the license is returned to the department for the recording thereon of such changes.~~

~~(b) Assigning or attempting to assign a license issued~~

~~under this part.~~

~~(c) Failing to show on a license application whether or not the agency or any owner of the agency is financially interested in any other business of like nature and, if so, failing to specify such interest or interests.~~

(a) ~~(d)~~ Failing to maintain the records required by s. 468.409 or knowingly making false entries in such records.

(b) ~~(e)~~ Requiring as a condition to registering or obtaining employment or placement for any applicant that the applicant subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop.

(c) ~~(f)~~ Failing to give each applicant a copy of a contract which lists the services to be provided and the fees to be charged by~~, which states that~~ the talent agency ~~is regulated by the department, and which lists the address and telephone number of the department~~.

(d) ~~(g)~~ Failing to maintain a record sheet as required by s. 468.412(1).

(e) ~~(h)~~ Knowingly sending or causing to be sent any artist to a prospective employer or place of business, the character or operation of which employer or place of business the talent agency knows to be in violation of the laws of the United States or of this state.

~~(3) The court may, in addition to other punishment provided for in subsection (2), suspend or revoke the license of any licensee under this part who has been found guilty of any misdemeanor listed in subsection (2).~~

(2) ~~(4)~~ In the event that ~~the department or~~ any state

attorney shall have probable cause to believe that a talent agency or other person has violated any provision of subsection (1), an action may be brought by ~~the department or~~ any state attorney to enjoin such talent agency or any person from continuing such violation, or engaging therein or doing any acts in furtherance thereof, and for such other relief as to the court seems appropriate. ~~In addition to this remedy, the department may assess a penalty against any talent agency or any person in an amount not to exceed $5,000.~~

Section 22. Section 468.414, Florida Statutes, is repealed.

Section 23. Section 468.415, Florida Statutes, is amended to read:

468.415 Sexual misconduct in the operation of a talent agency.—The talent agent-artist relationship is founded on mutual trust. Sexual misconduct in the operation of a talent agency means violation of the talent agent-artist relationship through which the talent agent uses the relationship to induce or attempt to induce the artist to engage or attempt to engage in sexual activity. Sexual misconduct is prohibited in the operation of a talent agency. ~~If~~ Any agent, owner, or operator of a ~~licensed~~ talent agency who commits ~~is found to have committed~~ sexual misconduct in the operation of a talent agency~~, the agency license shall be permanently revoked. Such agent, owner, or operator~~ shall be permanently prohibited from acting ~~disqualified from present and future licensure~~ as an agent, owner, or operator of a ~~Florida~~ talent agency.

Section 24. Section 468.451, Florida Statutes, is amended to read:

468.451 Legislative findings and intent.—The Legislature

finds that dishonest or unscrupulous practices by agents who solicit representation of student athletes can cause significant harm to student athletes and the academic institutions for which they play. It is the intent of the Legislature to provide civil and criminal causes of action against athlete agents to protect the interests of student athletes and academic institutions ~~by regulating the activities of athlete agents~~.

Section 25. Subsections (4) through (7) of section 468.452, Florida Statutes, are reordered and amended to read:

468.452 Definitions.—For purposes of this part, the term:

~~(4) "Department" means the Department of Business and Professional Regulation.~~

(6)~~(5)~~ "Student athlete" means any student who:

(a) Resides in Florida, has informed, in writing, a college or university of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so; or

(b) Does not reside in Florida, but has informed, in writing, a college or university in Florida of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so.

(4)~~(6)~~ "Financial services" means the counseling on or the making or execution of investment and other financial decisions by the agent on behalf of the student athlete.

(5)~~(7)~~ "Participation" means practicing, competing, or otherwise representing a college or university in intercollegiate athletics.

Section 26. Section 468.453, Florida Statutes, is repealed.

Section 27. Section 468.4536, Florida Statutes, is repealed.

Section 28. Subsections (2) and (12) of section 468.454, Florida Statutes, are amended to read:

468.454 Contracts.—

(2) An agent contract must state:

(a) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent and any other consideration the agent has received or will receive from any other source under the contract;

(b) The name of any person ~~not listed in the licensure application~~ who will be compensated because the student athlete signed the agent contract;

(c) A description of any expenses that the student athlete agrees to reimburse;

(d) A description of the services to be provided to the student athlete;

(e) The duration of the contract; and

(f) The date of execution.

~~(12) An agent contract between a student athlete and a person not licensed under this part is void and unenforceable.~~

Section 29. Section 468.456, Florida Statutes, is repealed.

Section 30. Section 468.4561, Florida Statutes, is repealed.

Section 31. Section 468.45615, Florida Statutes, is amended to read:

468.45615 Provision of illegal inducements to athletes

~~prohibited; penalties; license suspension~~.—

(1) A ~~Any~~ person who offers anything of value to another person to induce a student athlete to enter into an agreement by which the athlete agent will represent the student athlete commits ~~violates s. 468.456(1)(f) is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089, or s. 775.091. Negotiations regarding an athlete agent's fee are not considered an inducement.

(2)(a) Regardless of whether adjudication is withheld, any person convicted or found guilty of, or entering a plea of nolo contendere to, the violation described in subsection (1) may ~~shall~~ not employ, utilize, or otherwise collaborate with an ~~a licensed or unlicensed~~ athlete agent in Florida to illegally recruit or solicit student athletes. Any person who violates the provisions of this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089, or s. 775.091.

(b) Regardless of whether adjudication is withheld, any person who knowingly actively assists in the illegal recruitment or solicitation of student athletes for a person who has been convicted or found guilty of, or entered a plea of nolo contendere to, a violation of this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089, or s. 775.091.

~~(3) In addition to any other penalties provided in this section, the court may suspend the license of the person pending the outcome of any administrative action against the person by the department.~~

(3)~~(4)~~(a) An athlete agent, with the intent to induce a

student athlete to enter into an agent contract, may not:

1. Give any materially false or misleading information or make a materially false promise or representation;

2. Furnish anything of value to a student athlete before the student athlete enters into the agent contract; or

3. Furnish anything of value to any individual other than the student athlete or another athlete agent.

(b) An athlete agent may not intentionally:

1. ~~Initiate contact with a student athlete unless licensed under this part;~~

~~2.~~ Refuse or fail to retain or permit inspection of the records required to be retained by s. 468.4565;

~~3. Provide materially false or misleading information in an application for licensure;~~

2.~~4.~~ Predate or postdate an agent contract;

3.~~5.~~ Fail to give notice of the existence of an agent contract as required by s. 468.454(6); or

4.~~6.~~ Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agent contract for a sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

(c) An athlete agent who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 32. Section 468.4565, Florida Statutes, is amended to read:

468.4565 Business records requirement.—

~~(1)~~ An athlete agent shall establish and maintain complete

financial and business records. The athlete agent shall save each entry into a financial or business record for at least 5 years after ~~from~~ the date of entry. These records must include:

(1) ~~(a)~~ The name and address of each individual represented by the athlete agent;

(2) ~~(b)~~ Any agent contract entered into by the athlete agent; and

(3) ~~(c)~~ Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agent contract.

~~(2) The department shall have access to and shall have the right to inspect and examine the financial or business records of an athlete agent during normal business hours. Refusal or failure of an athlete agent to provide the department access to financial and business records shall be the basis for disciplinary action by the department pursuant to s. 455.225. The department may exercise its subpoena powers to obtain the financial and business records of an athlete agent.~~

Section 33. Section 468.457, Florida Statutes, is repealed.

Section 34. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)(a) If the applicant proposes to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, the ~~legal entity must apply for licensure through a qualifying agent or the~~ individual applicant must apply for

licensure under the name of the business organization ~~fictitious name~~.

(e) A ~~The~~ license~~, when issued upon application of a business organization,~~ must be in the name of the qualifying agent ~~business organization~~, and the name of the business organization ~~qualifying agent~~ must be noted on the license ~~thereon~~. If there is a change in any information that is required to be stated on the application, the qualifying agent ~~business organization~~ shall, within 45 days after such change occurs, mail the correct information to the department.

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

the entity to proceed with incomplete contracts.

(4)

(b) Upon a favorable determination by the department, after investigation of the financial responsibility, credit, and business reputation of the qualifying agent and the new business organization, the department shall issue, without any examination, a new license in the qualifying agent's ~~business organization's~~ name, and the name of the business organization ~~qualifying agent~~ shall be noted thereon.

(6) Each qualifying agent shall pay the department an amount equal to the original fee for licensure ~~of a new business organization.~~ if the qualifying agent for a business organization desires to qualify additional business organizations.~~,~~ The department shall require the agent to present evidence of supervisory ability and financial responsibility of each such organization. Allowing a licensee to qualify more than one business organization must ~~shall~~ be conditioned upon the licensee showing that the licensee has both the capacity and intent to adequately supervise each business organization. The department may ~~shall~~ not limit the number of business organizations that ~~which~~ the licensee may qualify except upon the licensee's failure to provide such information as is required under this subsection or upon a finding that the ~~such~~ information or evidence ~~as is~~ supplied is incomplete or unpersuasive in showing the licensee's capacity and intent to comply with the requirements of this subsection. A qualification for an additional business organization may be revoked or suspended upon a finding by the department that the licensee has failed in the licensee's responsibility to adequately supervise

the operations of the business organization. Failure to adequately supervise the operations of a business organization is ~~shall be~~ grounds for denial to qualify additional business organizations.

Section 35. Subsection (1) of section 469.009, Florida Statutes, is amended to read:

469.009 License revocation, suspension, and denial of issuance or renewal.—

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

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

(b) Violating any provision of chapter 455.

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

(d) Acting in the capacity of an asbestos contractor or

asbestos consultant under any license issued under this chapter except in the name of the licensee as set forth on the issued license.

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

(f) Obtaining a license by fraud or misrepresentation.

(g) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of asbestos consulting or contracting or the ability to practice asbestos consulting or contracting.

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

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

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

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

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

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

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

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

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

(n) Signing a statement with respect to a project or

contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.

(o) Committing fraud or deceit in the practice of asbestos consulting or contracting.

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

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

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

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

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

Section 36. Subsection (7) is added to section 477.0135, Florida Statutes, to read:

477.0135 Exemptions.—

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

whose occupation or practice is confined solely to adding polish to fingernails and toenails.

Section 37. Subsection (5) of section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part:

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

Section 38. Section 481.219, Florida Statutes, is amended to read:

481.219 Business organization; qualifying agents ~~Certification of partnerships, limited liability companies, and corporations~~.—

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

(2) If a licensee or an applicant proposes to engage in the practice of architecture or interior design as a business organization, the licensee or applicant must apply to qualify the business organization ~~For the purposes of this section, a~~

~~certificate of authorization shall be required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, she or he shall not be required to be certified under this section. Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services~~.

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

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

2. If the business is a corporation, state the names of the corporation and its officers and directors and the name of each of its stockholders who is also an officer or a director.

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

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

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

(3)(a) A business organization may not engage in the practice of architecture unless its qualifying agent is a registered architect under this part. A business organization

may not engage in the practice of interior design unless its qualifying agent is a registered architect or a registered interior designer under this part. A qualifying agent who terminates her or his affiliation with a business organization shall immediately notify the department of such termination. If the qualifying agent who terminates her or his affiliation is the only qualifying agent for a business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination. Except as provided in paragraph (b), such a business organization may not engage in the practice of architecture or interior design until it is qualified by a qualifying agent.

(b) In the event a qualifying architect or interior designer ceases employment with the business organization, the executive director or the chair of the board may authorize another registered architect or interior designer employed by the business organization to temporarily serve as its qualifying agent for a period of no more than 60 days. The business organization is not authorized to operate beyond such period under this chapter absent replacement of the qualifying architect or interior designer who has ceased employment.

(c) A qualifying agent shall notify the department in writing before engaging in the practice of architecture or interior design in her or his own name or in affiliation with a different business organization, and she or he or such business organization shall supply the same information to the department as required of applicants under this part ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or~~

~~person operating under a fictitious name, offering interior design services to the public jointly or separately. However, when an individual is practicing interior design in her or his own name, she or he shall not be required to be certified under this section~~.

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

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

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

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

services, if one of the following criteria is met ~~provided that~~:

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

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

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

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

(7) ~~(10)~~ Each qualifying agent approved to qualify a business organization ~~partnership, limited liability company, and corporation certified~~ under this section shall notify the department within 30 days of any change in the information contained in the application upon which the qualification ~~certification~~ is based. Any registered architect or interior designer who qualifies the business organization shall ensure ~~corporation, limited liability company, or partnership as provided in subsection (7) shall be responsible for ensuring~~ responsible supervising control of projects of the business organization ~~entity~~ and upon termination of her or his

employment with a business organization qualified ~~partnership, limited liability company, or corporation certified~~ under this section shall notify the department of the termination within 30 days.

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

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

(9) ~~(13)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed to mean that a certificate of registration to practice architecture or interior design must ~~shall~~ be held by a business organization ~~corporation, limited liability company, or partnership~~. ~~Nothing in~~ This section does not prohibit a business organization from offering ~~prohibits corporations, limited liability companies, and partnerships from joining together to offer~~ architectural, engineering, interior design, surveying and mapping, and landscape architectural services, or any combination of such services, to the public if the business

organization~~, provided that each corporation, limited liability company, or partnership~~ otherwise meets the requirements of law.

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

Section 39. Subsection (10) of section 481.221, Florida Statutes, is amended to read:

481.221 Seals; display of certificate number.—

(10) Each registered architect or interior designer~~, and each corporation, limited liability company, or partnership holding a certificate of authorization, shall~~ must include her or his license ~~its certificate~~ number in any newspaper, telephone directory, or other advertising medium used by the registered licensee ~~architect, interior designer, corporation, limited liability company, or partnership~~. Each business organization must include the license number of the registered architect or interior designer who serves as the qualifying agent for that business organization in any newspaper, telephone directory, or other advertising medium used by the business organization, but is not required to display the license numbers of other registered architects or interior designers employed by the business organization ~~A corporation, limited liability company, or partnership is not required to display the certificate number of individual registered architects or interior designers employed by or working within the corporation, limited liability company, or partnership~~.

Section 40. Paragraphs (a) and (c) of subsection (5) of section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

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

(c) Notwithstanding any other provision of this part, a registered architect or qualified business organization certified ~~any corporation, partnership, or person operating under a fictitious name which holds a certificate of authorization~~ to provide architectural services must ~~shall~~ be qualified, without fee, ~~for a certificate of authorization~~ to provide interior design services upon submission of a completed application for qualification ~~therefor~~. ~~For corporations, partnerships, and persons operating under a fictitious name which hold a certificate of authorization to provide interior design services, satisfaction of the requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of authorization to provide interior design services under that section.~~

Section 41. Section 481.303, Florida Statutes, is reordered and amended to read:

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

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

(3) ~~(2)~~ "Department" means the Department of Business and Professional Regulation.

(6) ~~(3)~~ "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

(2) ~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

~~(5) "Certificate of authorization" means a license issued by the department to a corporation or partnership to engage in the practice of landscape architecture.~~

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

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

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

(c) The setting of grades, shaping and contouring of land

and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein; and

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

(5) ~~(7)~~ "Landscape design" means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

Section 42. Subsection (5) of section 481.321, Florida Statutes, is amended to read:

481.321 Seals; display of certificate number.—

(5) Each registered landscape architect must ~~and each corporation or partnership holding a certificate of authorization shall~~ include her or his ~~its~~ certificate number in any newspaper, telephone directory, or other advertising medium used by the registered landscape architect, corporation, or partnership. A corporation or partnership must ~~is not required to~~ display the certificate number ~~numbers~~ of at least one officer, director, owner, or partner who is a ~~individual~~ registered landscape architect ~~architects~~ employed by or practicing with the corporation or partnership.

Section 43. Subsection (4) of section 481.311, Florida Statutes, is amended to read:

481.311 Licensure.—

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

Section 44. Subsection (2) of section 481.317, Florida Statutes, is amended to read:

481.317 Temporary certificates.—

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

Section 45. Section 481.319, Florida Statutes, is amended to read:

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

(1) The practice of or offer to practice landscape architecture by registered landscape architects registered under this part through a corporation or partnership offering landscape architectural services to the public, or through a corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners, is permitted, subject to the provisions of this section, if:

(a) One or more of the principal officers of the

corporation, or partners of the partnership, and all personnel of the corporation or partnership who act in its behalf as landscape architects in this state are registered landscape architects; and

(b) One or more of the officers, one or more of the directors, one or more of the owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect~~; and~~

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

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

(3) A landscape architect applying to practice in the name of a ~~An applicant~~ corporation must ~~shall~~ file with the department the names and addresses of all officers and board members of the corporation, including the principal officer or officers, duly registered to practice landscape architecture in this state and, also, of all individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by the corporation in this state. A landscape architect applying to practice in the name of a ~~An applicant~~ partnership must ~~shall~~ file with the department the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice landscape architecture in this state and, also, of an individual or individuals duly registered to practice landscape architecture in this state who shall be in

responsible charge of the practice of landscape architecture by said partnership in this state.

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

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

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

Section 46. Subsection (5) of section 481.329, Florida Statutes, is amended to read:

481.329 Exceptions; exemptions from licensure.—

(5) This part does not prohibit any person from engaging in the practice of landscape design, as defined in s. 481.303(5) ~~s. 481.303(7)~~, or from submitting for approval to a governmental agency planting plans that are independent of, or a component of, construction documents that are prepared by a Florida-registered professional. Persons providing landscape design services shall not use the title, term, or designation

"landscape architect," "landscape architectural," "landscape architecture," "L.A.," "landscape engineering," or any description tending to convey the impression that she or he is a landscape architect unless she or he is registered as provided in this part.

Section 47. Subsection (14) of section 489.503, Florida Statutes, is amended, and subsection (24) is added to that section, to read:

489.503 Exemptions.—This part does not apply to:

(14) The sale of, installation of, repair of, alteration of, addition to, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, computers, customer premises equipment, customer premises wiring, and conduit, or any part thereof, ~~by an employee, contractor, subcontractor, or affiliate of a company operating under a certificate issued under chapter 364 or chapter 610, or under a local franchise or right-of-way agreement,~~ if those items are for the purpose of transmitting data, voice, video, or other communications, or commands as part of a cable television, community antenna television, radio distribution, communications, or telecommunications system. An employee, subcontractor, contractor, or affiliate of a company that operates under a certificate issued under chapter 364 or chapter 610, or under a local franchise or right-of-way agreement, is not subject to any local ordinance that requires a permit for work related to low-voltage electrical work, including related technical codes, regulations, and licensure. The scope of this exemption is limited to electrical circuits and equipment governed by the applicable provisions of Articles 725 (Classes 2

and 3 circuits only), 770, 800, 810, and 820 of the National Electrical Code, current edition, or 47 C.F.R. part 68~~, and employees, contractors, and subcontractors of companies, and affiliates thereof, operating under a certificate issued under chapter 364 or chapter 610 or under a local franchise or right-of-way agreement~~. This subsection does not relieve any person from licensure as an alarm system contractor.

(24) A person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation, wiring, or a modification to the electrical wiring in a structure.

Section 48. Present paragraphs (a) through (e) of subsection (2) of section 489.518, Florida Statutes, are redesignated as paragraphs (b) through (f), respectively, and a new paragraph (a) is added to that subsection, to read:

489.518 Alarm system agents.—

(2)(a) A person who performs only sales or installations of wireless alarm systems, other than fire alarm systems, in a single-family residence is not required to complete the initial training required for burglar alarm system agents.

Section 49. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1050
INTRODUCER:	Regulated Industries Committee and Senator Brandes
SUBJECT:	Regulated Professions and Occupations
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Caldwell	RI	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
3.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1050 eliminates current business license requirements for certain regulated professions, but licensure requirements for individuals engaged in those professions remain intact. The affected professions are architects, interior designers, asbestos abatement consultants and contractors, and landscape architects.

The bill allows certain activities to be practiced without licensure, including nail polishing, low voltage landscape lighting, and low voltage communication cabling. The bill eliminates licensure and registration requirements for athlete agents, talent agencies, hair wrappers, body wrappers, and labor organizations. Licensure of branch offices for yacht and ship brokers is also eliminated.

The bill has a significant negative fiscal impact to the Department of Business and Professional Regulation (DBRP or department) and to the Service Charge to General Revenue (see Section V, Fiscal Impact Statement).

II. Present Situation:

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR or department). There are 12 divisions, which include:

- Administration;
- Alcoholic Beverages and Tobacco;

- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

There are 15 boards and programs established within the Division of Professions,[1] two boards within the Division of Real Estate,[2] and one board within the Division of Certified Public Accounting.[3] The Florida State Boxing Commission (boxing commission) is also assigned to the DBPR for administrative and fiscal accountability purposes only.[4] The department also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[5]

Regulation of professions is limited under Florida law, to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[6] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[7]

[1] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.
[2] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.
[3] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.
[4] Section 548.003(1), F.S.
[5] Section 455.01(6), F.S.
[6] Section 455.201(2), F.S.
[7] *Id.*

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[8]

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the department as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[9] When a person is authorized to engage in a profession or occupation in Florida, the department issues a "permit, registration, certificate, or license" to the licensee.[10]

In Fiscal Year 2014-2015, the Division of Accountancy had 38,678 licensees, the Division of Real Estate had 330,565 licensees, and the Board of Professional Engineers had 57,756 licensees.[11] In Fiscal Year 2014-2015, there were 415,207 licensees in the Division of Professions,[12] including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.[13]

Sections 455.203 and 455.213, F.S., establish general licensing provisions for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the

[8] Section 455.201(4)(b), F.S.
[9] *See* s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. *See* s. 455.221(1), F.S.
[10] Section 455.01(4) and (5), F.S.
[11] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2014-2015,* http://www.myfloridalicense.com/dbpr/os/documents/FY2014-2015AnnualReportFinal.pdf (last accessed Jan. 31, 2016) at 22.
[12] Of the total 415,207 licensees in the Division of Professions, 22,566 are inactive. *Id*. at 22.
[13] *Id*. at 13.

department must determine by rule the amount of license fees for its profession, based on estimates of the required revenue to implement regulatory laws.[14]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[15] The FCTMH has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction limited to arbitration of election and recall disputes).[16]

Yacht and Ship Broker Branch Office Licenses

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker's Section, a unit of the FCTMH, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.[17]

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.[18] "Each [yacht or ship] broker must maintain a principle place of business in this state and may establish branch offices in the state. A separate license must be maintained for each branch office."[19]

Applicants for a branch office license and renewal pay a $100 fee with a license renewal every two years.[20] There is no requirement on the branch office other than to obtain licensure. Additionally, there are no inspection requirements.

Labor Organizations

Chapter 447, F.S., governs the licensing and regulation of labor organizations, and related business agents in the state. The Division of Regulation within the DBPR oversees the licensing and regulation of labor organizations. The Division of Regulation processes licenses and

[14] Section 455.219(1), F.S.
[15] Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/dbpr/lsc/index.html, (last visited January 8, 2016).
[16] *Id*.
[17] Department of Business and Professional Regulation, *Yacht and ship Brokers; Licensing and Enforcement*, http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html, (last visited on January 12, 2016).
[18] Section 326.004(1), F.S.
[19] Section 326.004(13), F.S.
[20] Rule 61B-60.002, F.A.C.

responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as "[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state."[21]

In Florida, all labor organizations are required to register with the department and all business agents of labor organizations must obtain a license.[22] Business agents are defined as "[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

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

Applicants for a business agent license shall pay $25 fee for licensure and must meet a number of licensure requirements.[24] Labor organization applicants must pay an annual fee of $1.[25]

Talent Agencies

Chapter 468, Part VII, F.S., governs the licensing and regulation of talent agencies in the state. The Division of Professions within the DBPR oversees the licensing and regulation of talent agencies. The Division of Professions processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the talent agency industry.

Individuals are prohibited from owning, operating, soliciting business, or otherwise engaging in or carrying on the occupation of a talent agency in this state unless the person first obtains licensure for the talent agency.[26] A talent agency is defined as "[a]ny person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist."[27]

To qualify for a talent agency license, the applicant must be of good moral character and shall show whether or not the agency, any person, or any owner of the agency is financially interested in any other business of like nature, and if so, shall specify the interests.[28]

At the time of application, applicants for a talent agency license must pay an application fee of $300, an unlicensed activity fee of $5, and an initial licensure fee of $200 if licensed after

[21] Section 447.02(1), F.S.
[22] Section 447.04(2), F.S.
[23] Section 447.02(2), F.S.
[24] Section 447.04(2), F.S.
[25] Section 447.06(2), F.S.
[26] Section 468.403(1), F.S.
[27] Section 468.401, F.S.
[28] Section 468.405, F.S.

March 31 of any odd numbered year. Otherwise the initial license fee is $400. Talent agency license holders must pay a biennial renewal fee of $400.[29]

Licensed talent agencies are required to:
- File an itemized schedule of maximum fees, charges, and commissions it intends to charge and collect for its services;[30]
- Pay to the artist all money collected from an employer for the benefit of an artist within five business days after receipt of the money;[31]
- Display a copy of the license conspicuously in the place of business;[32]
- File a bond with the department in the form of a surety for the penal sum of $5,000, which may be drawn upon if a person is aggrieved by the misconduct of the talent agency;[33]
- Maintain records including the application, registration, or contract of each artist, with additional information;[34]
- Provide a copy of the contract to the artist within 24 hours of the contract's execution;[35] and
- Comply with the prohibited acts set forth in s. 468.412, F.S.

Licensed talent agencies are prohibited from:
- Charging the artist a registration fee;[36]and
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, and advertisement, resume service, photography service, school, acting school, workshop, or acting workshop.[37]

Section 468.415, F.S., provides prohibitions against sexual misconduct.

Section 468.413, F.S., provides criminal penalties for:
- Operating a talent agency without a license;
- Obtaining a license through misrepresentation;
- Assigning a license to another individual;
- Relocating a talent agency without notifying the department;
- Failing to provide information on an application regarding related businesses;
- Failing to maintain records;
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop;
- Failing to provide a copy of the contract to the artist;
- Failing to maintain a record sheet; and

[29] Rule 61-19.005, F.A.C.
[30] Section 468.406(1), F.S.
[31] Section 468.406(2), F.S.
[32] Section 468.407(2), F.S.
[33] Section 468.408, F.S.
[34] Section 468.409, F.S.
[35] Section 468.410(3), F.S.
[36] Section 468.410(1), F.S.
[37] Section 468.410(2), F.S.

- Knowingly sending an artist to an employer the licensee knows to be in violation of the laws of Florida or of the United States.

Athlete Agents

Chapter 468, Part IX, F.S., governs the licensing and regulation of athlete agents in the state. The Division of Professions within the DBPR oversees the licensing and regulation of athlete agents. The Division of Professions processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the athlete agent industry.

Individuals are prohibited from practicing as an athlete agent in Florida without first being licensed as an athlete agent.[38] An athlete agent is defined as:

> [A] person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation. This term includes all employees and other persons acting on behalf of an athlete agent who participate in the activities included under this subsection. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.[39]

In order to be licensed, an applicant must be at least 18 years of age, of good moral character, and have completed the application form and remitted an application fee of $500, a licensure fee of $375, and an unlicensed activity fee of $5. Athlete agent license holders must pay a biennial renewal fee of $220.[40]

Licensed athlete agents are required to:
- Comply with specific contract requirements;[41]
- Comply with the prohibited acts;[42] and
- Maintain financial and business records.[43]

Section 468.45615, F.S., provides criminal penalties for a licensed athlete agent who provides anything of value to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete.[44]

[38] Section 468.453(1), F.S.
[39] Section 468.452(2), F.S.
[40] Rule 61-24.004, F.A.C.
[41] Section 468.454, F.S.
[42] Section 468.456, F.S.
[43] Section 468.4565, F.S.
[44] Section. 468.456(1)(f), F.S.

Asbestos Abatement Business Organization

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement in the state. The Asbestos Licensing Unit is a program located under the Division of Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.[45]

A person must be a licensed asbestos contractor in order to conduct asbestos abatement work.[46] A person must be a licensed asbestos consultant in order to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.[47]

If an applicant for licensure as an asbestos consultant or contractor proposed to engage in consulting or contracting as a business organization, such as a corporation or other legal entity, or in any name other than the applicant's legal name, the business organization must be licensed as an asbestos abatement business. Each licensed business organization must have a qualifying agent that is licensed under ch 469, F.S.,[48] and that is qualified to supervise and is financially responsible. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination, and may not engage in the practice of asbestos abatement until it is qualified.

Applicants for an asbestos abatement business license pay an application fee of $300, an unlicensed activity fee of $5, an initial licensure fee of $250, and a biennial renewal fee of $250.[49] There is no requirement on the branch office other than to obtain licensure. Additionally, there are no inspection requirements.

Nail Painting

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology is a board located within the Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

[45] Florida Department of Business and Professional Regulation, *2016 Legislative Bill Analysis*, *Senate Bill 1050*, p. 2, (December 16, 2015).
[46] Section 469.003(3), F.S.
[47] Section 469.003, F.S.
[48] Section 469.006, F.S.
[49] Rule 61E1-3.001, F.A.C.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.

A "specialist" is defined as "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."[50] The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."[51]

The term "cosmetologist" is defined as "a person who is licensed to engage in the practice of cosmetology…"[52] The term "cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."[53]

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.[54] All cosmetology and specialty salons are subject to inspection by the department.[55]

To qualify for a specialist license, the applicant must be at least 16 years old, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with the department with the registration fee.[56]

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least one year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.[57]

[50] Section 477.013(5), F.S.
[51] Section 477.013(6), F.S.
[52] Section 477.013(3), F.S.
[53] Section 477.013(4), F.S.
[54] Section 477.0263, F.S.
[55] Section 477.025, F.S.
[56] Section 477.0201, F.S.
[57] Section 477.019(2), F.S.

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist. The department does not have a separate license for polishing nails.

Hair Wrapping and Body Wrapping

Persons who wish to practice hair wrapping or body wrapping must register with the DBPR.[58] Hair wrapping is defined as "wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology."[59]

Body wrapping is defined as "a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include:

- The application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps; or
- Manipulation of the body's superficial tissue, other than that arising from compression emanating from the wrap materials."[60]

To qualify for a hair wrapping or body wrapping registration, the applicant must submit a registration application with the department, provide the registration fee, and take a two-day, 12-hour, board-approved course that consists of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting hair wrapping or body wrapping.[61]

At the time of application, applicants for a hair wrapping or body wrapping registration must pay a registration fee of $20 and an unlicensed activity fee of $5. Registration holders must pay a biennial renewal fee of $20.[62]

Architecture Business or Interior Design Organization

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations in the state. The Board of Architecture and Interior Design is a board located under the Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

"The practice of or the offer to practice architecture or interior design by licensees through a corporation, limited liability company, or partnership offering architectural or interior design services to the public, or by a corporation, limited liability company, or partnership offering

[58] Section 477.0132(1), F.S.
[59] Section 477.013(10), F.S.
[60] Section 477.013(12), F.S.
[61] Section 477.0132(1), F.S.
[62] Rule 61G5-24.019, F.A.C.

architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted, subject to the provisions of [ch. 481, Part I, F.S.]."[63] An architecture or interior design business corporation, limited liability company, or partnership, which is offering architecture or interior design service to the public, must obtain a certificate of authorization prior to practicing.[64]

Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of $100, an unlicensed activity fee of $5, and a biennial renewal fee of $125.[65] There is no requirement on the business entity other than to obtain licensure. Additionally, there are no inspection requirements.

Landscape Architecture Business Organization

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture is a board located within the Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

A person may not knowingly practice landscape architecture unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.[66] A corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect;
- The corporation or partnership has been issued a certificate of authorization by the board.[67]

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of $450, an unlicensed activity fee of $5, and a biennial renewal fee of $337.50.[68] There is no requirement on the business entity other than to obtain licensure. Additionally, there are no inspection requirements.

Low Voltage Communication Cable

Chapter 489, Part II, F.S., governs the licensing and regulation of electrical contractors, alarm system contractors, and certain specialty contractors in the state. The Electrical Contractors' Licensing Board is a board located within the Division of Professions. The Electrical Contractors' Licensing Board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the electrical contracting industry.

[63] Section 481.219(1), F.S.
[64] Section 481.219(2)-(3), F.S.
[65] Rules 61G1-17.001 and 61G1-17.002, F.A.C.
[66] Section 481.323(1)(a), F.S.
[67] Section 481.319(1), F.S.
[68] Rule 61G10-12.002, F.A.C.

The term "electrical contractor" is defined as:

> [A] person who conducts business in the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, appliances, apparatus, raceways, conduit, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, all in compliance with applicable plans, specifications, codes, laws, and regulations. The term means any person, firm, or corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting.[69]

The term "alarm system contractor" is defined as:

> [A] person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems for compensation, including, but not limited to, all types of alarm systems for all purposes. This term also means any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract; that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of alarm contracting; or that by itself or by or through others engages in the business of alarm contracting.[70]

The term "specialty contractor" as referenced in ch. 489, Part II, F.S., is defined as:

> [A] contractor whose scope of practice is limited to a specific segment of electrical or alarm system contracting established in a category adopted by board rule, including, but not limited to, residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs together with the interrelated parts and supports…[71]

The Electrical Contractors' Licensing Board created a "Limited Energy Systems" specialty, clarifying the scope of the specialty license to include "the installation, repair, fabrication, erection, alteration, addition to, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, conduit, and fiber optics (transmission of light over stranded glass) or any

[69] Section 489.505(12), F.S.
[70] Section 489.505(2), F.S.
[71] Section 489.505(19), F.S.

part thereof not to exceed 98 volts, (RMS). The scope of work of this license does not include installation, repair, fabrication, erection, alteration, addition to, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, or conduit, that are part of an alarm system."[72]

The act of installing low voltage communication cabling currently falls under the scope of practice of a limited energy systems specialty license, electrical residential contractor license, and alarm systems contractor license. Therefore, at present an individual wishing to do so for compensation is required to obtain one of the listed licenses prior to completing the work.

Section 489.503(14), F.S., provides an exemption from licensure requirements for the selling, installing, repairing, altering, adding, or designing of low voltage communication cabling by employees of cable or communication companies operating under a certificate issued under ch. 364 or ch. 610, F.S., or under a local franchise or right-of-way agreement.

Low-Voltage Landscape Lighting

The act of installing low voltage landscape lighting systems that plug into existing receptacles currently falls under the scope of practice of a limited energy systems specialty license, electrical residential contractor license, and alarm systems contractor license. Therefore, currently, an individual wishing to do so for compensation is required to obtain one of the listed licenses prior to completing the work.

Burglar Alarm Systems Agents

A licensed electrical or alarm system contractor may hire a burglar alarm system agent to perform elements of alarm system contracting. A burglar alarm systems agent is defined as a person:

- Who is employed by a licensed alarm system contractor or licensed electrical contractor;
- Who is performing duties which are an element of an activity which constitutes alarm system contracting requiring licensure under this part; and
- Whose specific duties include any of the following: altering, installing, maintaining, moving, repairing, replacing, servicing, selling, or monitoring an intrusion or burglar alarm system for compensation.[73]

A licensed electrical or alarm system contractor may not employ a person as a burglar alarm system agent unless that person:

- Is at least 18 years old;
- Has completed a minimum of 14 hours of specific training from a board-approved provider;
- Has not been convicted within the previous three years of a crime directly related to the employment;
- Has not been committed for controlled substance abuse or been found guilty of a crime under chapter 893, F.S. within the previous three years.[74]

[72] Rule 61G6-7.001(4), F.A.C.
[73] Section 489.505(25), F.S.
[74] Section 489.518(1), F.S.

Each burglar alarm system agent must receive six hours of continuing education on burglar alarm system installation and repair and false alarm prevention every two years from a board-approved sponsor of training and through a board-approved training course.[75]

III. Effect of Proposed Changes:

Section 1 amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers, in addition to licensure of the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license. No disciplinary orders against branch office licenses were issued in the previous three fiscal years.[76]

Sections 2 through **9** amend the provisions in Part I of ch. 447, F.S., to eliminate the registration and regulation of labor organizations by the Department of Business and Professional Regulation (DBPR or department). Provisions relating to the right to work and strike, recordkeeping, rights of franchise for labor organizations, civil causes of action, criminal penalties, and recognition of federal regulations remain effective.

According to the department, the National Labor Relations Board (NLRB) is active in Florida and provides similar oversight of unions to that of the DBPR. The United States Department of Labor, Office of Labor Management Standards also registers unions. The department issued no disciplinary orders against labor organizations during the three previous fiscal years.[77]

Section 10 repeals Part VII of ch. 468, F.S., and eliminates the regulation of talent agencies by the DBPR. According to the department, three disciplinary orders were issued against talent agencies in the three previous fiscal years; two involved minor violations for failure to include the talent agency's license number in advertisements. The financial account of the licensing program has been in a perpetual deficit since creation of talent agency licensure in 1986.[78]

Sections 11 through **20** amend Part IX of ch. 468, F.S., to eliminate all licensing requirements for athlete agents. According to the department, no disciplinary orders were issued against athlete agents in the previous three fiscal years.[79] Certain civil and criminal causes of action against athlete agents remain effective.

Sections 21 and **22** amend ch. 469, F.S., to remove the requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license. No disciplinary orders against a licensed asbestos abatement business were issued in the three previous fiscal years. Asbestos abatement contractors must qualify the business organizations they supervise and are liable for the actions of those businesses. Asbestos abatement contractors must inform the department of any change in their relationship with the qualified business, and a qualified

[75] Section 489.518(5), F.S.
[76] S*ee 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 1050*, Dec. 16, 2015 (on file with Senate Committee on Regulated Industries) at 4-5.
[77] *Id.* at 4.
[78] *Id.*
[79] *Id.*

business has 60 days to obtain another asbestos abatement contractor to serve as qualifying agent.

Sections 23 through **28** amend ch. 477, F.S., to eliminate registration requirements for persons engaged in hair wrapping, body wrapping, and nail polishing. According to the department, these services are limited to non-invasive procedures and the use of harmful chemicals is prohibited. The Board of Cosmetology issued two disciplinary orders against body wrappers in the three previous fiscal years, and neither involved injury to a consumer.[80]

The Board of Cosmetology issued nine disciplinary orders against hair wrappers in the three previous fiscal years; six licensees were disciplined for practicing with an expired license or failing to timely renew their salon license.[81]

The Board of Cosmetology issued three disciplinary orders against licensed cosmetologists or cosmetology salons for matters involving nail polishing in the three previous fiscal years. Two were for unlicensed activity, and one involved a nail specialist practicing with an expired license. None involved injury to a consumer.[82]

According to the department, these 14 orders are one-half of one percent of the 2,690 disciplinary orders issued by the Board of Cosmetology during the last three fiscal years.[83]

Sections 29 through **32** amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license in addition to an individual license. The bill provides that architects and interior designers qualify their business organization with their individual licenses. The bill provides that architects and interior designers must inform the department of any change in their relationship with the qualified business, and the business has 60 days to obtain another qualifying architect or interior designer.

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

According to the department, in the three previous fiscal years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.[84]

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in the three previous fiscal years in cases that did not also involve discipline

[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*at 5.

against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.[85]

Sections 33 through **38** amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and will be liable for the actions of the business organizations they qualify.

The bill repeals the department's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the bill repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed a year to an out-of-state corporation, partnership, or firm.

The bill provides that a corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect; and
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

The bill provides that landscape architects must inform the department of any change in their relationship with the qualified business, and the business has one month to obtain another qualifying landscape architect. According to the department, the Board of Landscape Architecture and Design issued no disciplinary orders against landscape architecture businesses during the three previous fiscal years.[86]

Sections 39 and **40** amend s. 489.503, F.S., to exempt from licensure as an electrical or alarm system contractor, those persons engaged in the installation or repair of low voltage or communication cabling. Low voltage cabling is limited to a maximum of 98 volts. Section 489.503, F.S., already exempts from licensure those employed by cable and telephone companies, who engage in the installation, maintenance, repair, etc. of systems relating to the transmission of voice and data. The bill exempts all persons from the licensure requirement, whether or not they are employed by a cable and telephone company. According to the department, the Electrical Contractors' Licensing Board issued no disciplinary orders for such work in the three previous fiscal years.[87]

The bill provides that a person installing low voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation or wiring is exempt from licensure requirements. The proposed exemption does not permit the alteration of a home's internal electrical system. According to the department, the Electrical Contractors' Licensing

[85] *Id.*
[86] *Id.*
[87] *Id.*

Board issued no disciplinary orders against licensees providing these services during the three previous fiscal years.[88]

In addition, the bill provides that persons who perform only sales or installation of wireless alarm systems, other than fire alarms, in a single family residence, are not required to complete the 14 hours of training required of burglar alarm system agents. Burglar alarm system agents installing a wireless system are required to be supervised by a properly licensed electrical or alarm system contractor who is responsible for ensuring proper installation of the alarm system. According to the DBPR, the Electrical Contractors Licensing Board issued no disciplinary orders in the three previous fiscal years relating to this supervision requirement.[89]

Sections 41 provides the bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1050 eliminates the requirement for several professions to obtain a license in order to practice in the state. According to the Department of Business and Professional Regulation (DBPR or department), licensees will receive the benefit of fee reductions in the amounts shown below:

- Yacht and Ship Brokers - approximately $1,200 in Fiscal Year 2015-2016; $6,100 in Fiscal Year 2016-2017; $2,600 in Fiscal Year 2017-2018; and $6,100 in Fiscal Year 2018-2019.
- Professions (labor organizations, athlete agents, hair wrappers, body wrappers, talent agents, and business licenses related to architects, interior designers, landscape architects, and asbestos abatement consultants and contractors) - approximately

[88] *Id.*
[89] *Id.*

$231,300 in Fiscal Year 2015-2016; $253,809 in Fiscal Year 2016-2017; $1,126,974 in Fiscal Year 2017-2018, and $253,809 in Fiscal Year 2018-2019.

C. Government Sector Impact:

According to the DBPR,[90] a reduction in state revenue within the Professional Regulation Trust Fund and the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund is anticipated to be $1,881,892 from Fiscal Year 2015-2016 to Fiscal Year 2018-2019 (see table below), with a corresponding reduction of approximately $150,551 in the Service Charge to General Revenue.

Reductions

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Revenues: License fees	Condominiums (Yacht and Ship Brokers) ($1,200) Professions ($231,300)	Condominiums (Yacht and Ship Brokers) ($6,100) Professions ($253,809)	Condominiums (Yacht and Ship Brokers) ($2,600) Professions ($1,126,974)	Condominiums (Yacht and Ship Brokers) ($6,100) Professions ($253,809)
Expenditures: Surcharge to GR (non-operating)	Condominiums (Yacht and Ship Brokers) ($96) Professions ($18,504)	Condominiums (Yacht and Ship Brokers) ($488) Professions ($20,305)	Condominiums (Yacht and Ship Brokers) ($208) Professions ($90,158)	Condominiums (Yacht and Ship Brokers) ($488) Professions ($20,305)

The effective date of the bill is July 1, 2016. However, the department anticipates revenue and expenditure reductions in Fiscal Year 2015-2016 (see table above) associated with the licensure renewal of athlete and talent agents and yacht and ship branch offices. Currently, the biennial renewals for athlete agents and talent agents are due May 31 during even years. Yacht and Ship branch office licenses are renewed for a period up to two years based on the expiration date of the licensee's associated yacht and ship broker license. In anticipation of the elimination of the licenses and fees provided in the bill, the department contemplates not collecting renewals for these particular licenses in the remaining months prior to the effective date of the bill.

According to the DBPR, changes in licensing and renewal requirements will require programming modifications which can be handled with existing resources.[91] In addition, the elimination and modification of certain licenses and registration will necessitate the repeal or amendment of rules and applications regarding those licenses and registrations, which can be handled with existing resources.

[90] *See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 1050,* Dec. 16, 2015 (on file with Senate Committee on Regulated Industries) at 8.

[91] *Id*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 326.004, 447.02, 447.09, 468.451, 468.452, 468.454, 468.45615, 468.4565, 469.006, 469.009, 477.0132, 477.0135, 477.019, 477.026, 477.0265, 477.029, 481.203, 481.219, 481.221, 481.229, 481.303, 481.321, 481.311, 481.317, 481.319, 481.329, 489.503, and 489.518.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, 468.401, 468.402, 468.403, 468.404, 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, 468.414, 468.415, 468.453, 468.4536, 468.456, 468.4561, and 468.457.

IX. Additional Information:

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

CS by Regulated Industries on February 2, 2016:
The CS deletes the exemption proposed for veterinary acupressure or veterinary massage. It removes joint and several liability of a licensed qualifying agent for a business organization offering architectural or interior design services, for any damages resulting from the actions of the organization. All provisions relating to certificates of authorization for the practice of professional geology and qualification of the organization by active licensed professional geologists in the state were removed from the bill.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Brandes

580-02951-16 20161050c1

A bill to be entitled

An act relating to regulated professions and occupations; amending s. 326.004, F.S.; deleting a requirement that yacht and ship brokers maintain a separate license for each branch office and related fees; amending s. 447.02, F.S.; deleting a definition; repealing s. 447.04, F.S., relating to business agents, licenses, and permits; repealing s. 447.041, F.S., relating to hearings; repealing s. 447.045, F.S., relating to certain confidential information; repealing s. 447.06, F.S., relating to the required registration of labor organizations; amending s. 447.09, F.S.; deleting prohibitions against specified actions; repealing s. 447.12, F.S., relating to registration fees; repealing s. 447.16, F.S., relating to the applicability of ch. 447, F.S.; repealing part VII of ch. 468, F.S., relating to the regulation of talent agencies; amending s. 468.451, F.S.; revising legislative intent related to the regulation of athlete agents; reordering and amending s. 468.452, F.S.; deleting the term "department"; repealing s. 468.453, F.S., relating to the licensure of athlete agents; repealing s. 468.4536, F.S., relating to renewal of such licenses; amending s. 468.454, F.S.; revising the information that must be stated in agent contracts; deleting a condition under which an agent contract is void and unenforceable; repealing s. 468.456, F.S., relating to prohibited acts for athlete agents; repealing s. 468.4561, F.S., relating to unlicensed activity and penalties for violations; amending s. 468.45615, F.S.; conforming provisions to changes made by the act; amending s. 468.4565, F.S.;

580-02951-16 20161050c1

deleting provisions authorizing the Department of Business and Professional Regulation to access and inspect certain records of athlete agents and related disciplinary actions and subpoena powers; repealing s. 468.457, F.S., relating to rulemaking authority; amending s. 469.006, F.S.; requiring that a license be in the name of a qualifying agent rather than the name of a business organization; requiring the qualifying agent, rather than the business organization, to report certain changes in information; conforming provisions to changes made by the act; amending s. 469.009, F.S.; deleting the authority of the department to reprimand, censure, or impose probation on certain business organizations; amending s. 477.0132, F.S.; excluding the practices of hair wrapping and body wrapping from regulation under the Florida Cosmetology Act; amending s. 477.0135, F.S.; providing that a license or registration is not required for a person whose occupation or practice is confined solely to adding polish to nails or solely to hair wrapping or body wrapping; amending ss. 477.019, 477.026, 477.0265, and 477.029, F.S.; conforming provisions to changes made by the act; amending s. 481.203, F.S.; defining the term "business organization"; deleting the definition of the term "certificate of authorization"; amending s. 481.219, F.S.; revising the process by which a business organization obtains the requisite license to perform architectural services; requiring that a licensee or

an applicant apply to qualify a business organization under certain circumstances; specifying application requirements; authorizing the Board of Architecture and Interior Design to deny an application under certain circumstances; requiring that a qualifying agent be a registered architect or a registered interior designer under certain circumstances; requiring that a qualifying agent notify the department when she or he ceases to be affiliated with a business organization; prohibiting a business organization from engaging in certain practices until it is qualified by a qualifying agent; authorizing a business organization to proceed with specified contracts under a temporary certificate in certain circumstances; defining the term "incomplete contract"; requiring the qualifying agent to give written notice to the department before engaging in practice under her or his own name or in affiliation with another business organization; requiring the board to certify an applicant to qualify one or more business organizations or to operate using a fictitious name under certain circumstances; conforming provisions to changes made by the act; amending ss. 481.221 and 481.229, F.S.; conforming provisions to changes made by the act; reordering and amending s. 481.303, F.S.; deleting the term "certificate of authorization"; amending s. 481.321, F.S.; revising provisions that require persons to display certificate numbers under certain

circumstances; conforming provisions to changes made by the act; amending ss. 481.311, 481.317, and 481.319, F.S.; conforming provisions to changes made by the act; amending s. 481.329, F.S.; conforming a cross-reference; amending s. 489.503, F.S.; deleting an exemption from regulation for certain persons; exempting a person who installs certain low-voltage landscape lighting from specified requirements; amending s. 489.518, F.S.; exempting certain persons from initial training for burglar alarm system agents; providing an effective date.

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

Section 1. Subsection (13) of section 326.004, Florida Statutes, is amended to read:

326.004 Licensing.—

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. ~~A separate license must be maintained for each branch office. The division shall establish by rule a fee not to exceed $100 for each branch office license.~~

Section 2. Subsection (3) of section 447.02, Florida Statutes, is amended to read:

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

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

Section 3. Section 447.04, Florida Statutes, is repealed.

Section 4. Section 447.041, Florida Statutes, is repealed.

Section 5. Section 447.045, Florida Statutes, is repealed.

Section 6. Section 447.06, Florida Statutes, is repealed.

Section 7. Subsections (6) and (8) of section 447.09, Florida Statutes, are amended to read:

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

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

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

Section 8. Section 447.12, Florida Statutes, is repealed.

Section 9. Section 447.16, Florida Statutes, is repealed.

Section 10. Part VII of chapter 468, Florida Statutes, consisting of ss. 468.401, 468.402, 468.403, 468.404, 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, 468.414, and 468.415, is repealed.

Section 11. Section 468.451, Florida Statutes, is amended to read:

468.451 Legislative findings and intent.—The Legislature finds that dishonest or unscrupulous practices by agents who solicit representation of student athletes can cause significant harm to student athletes and the academic institutions for which they play. It is the intent of the Legislature to provide civil and criminal causes of action against athlete agents to protect the interests of student athletes and academic institutions ~~by regulating the activities of athlete agents~~.

Section 12. Subsections (4) through (7) of section 468.452,

Florida Statutes, are reordered and amended to read:

468.452 Definitions.—For purposes of this part, the term:

~~(4) "Department" means the Department of Business and Professional Regulation.~~

(6)~~(5)~~ "Student athlete" means any student who:

(a) Resides in Florida, has informed, in writing, a college or university of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so; or

(b) Does not reside in Florida, but has informed, in writing, a college or university in Florida of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so.

(4)~~(6)~~ "Financial services" means the counseling on or the making or execution of investment and other financial decisions by the agent on behalf of the student athlete.

(5)~~(7)~~ "Participation" means practicing, competing, or otherwise representing a college or university in intercollegiate athletics.

Section 13. Section 468.453, Florida Statutes, is repealed.

Section 14. Section 468.4536, Florida Statutes, is repealed.

Section 15. Subsections (2) and (12) of section 468.454, Florida Statutes, are amended to read:

468.454 Contracts.—

(2) An agent contract must state:

(a) The amount and method of calculating the consideration

to be paid by the student athlete for services to be provided by the athlete agent and any other consideration the agent has received or will receive from any other source under the contract;

(b) The name of any person ~~not listed in the licensure application~~ who will be compensated because the student athlete signed the agent contract;

(c) A description of any expenses that the student athlete agrees to reimburse;

(d) A description of the services to be provided to the student athlete;

(e) The duration of the contract; and

(f) The date of execution.

~~(12) An agent contract between a student athlete and a person not licensed under this part is void and unenforceable.~~

Section 16. Section 468.456, Florida Statutes, is repealed.

Section 17. Section 468.4561, Florida Statutes, is repealed.

Section 18. Section 468.45615, Florida Statutes, is amended to read:

468.45615 Provision of illegal inducements to athletes ~~prohibited; penalties; license suspension~~.—

(1) A ~~Any~~ person who offers anything of value to another person to induce a student athlete to enter into an agreement by which the athlete agent will represent the student athlete commits ~~violates s. 468.456(1)(f) is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089, or s. 775.091. Negotiations regarding an athlete agent's fee are not considered an inducement.

(2)(a) Regardless of whether adjudication is withheld, any person convicted or found guilty of, or entering a plea of nolo contendere to, the violation described in subsection (1) may ~~shall~~ not employ, utilize, or otherwise collaborate with an ~~a licensed or unlicensed~~ athlete agent in Florida to illegally recruit or solicit student athletes. Any person who violates the provisions of this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089, or s. 775.091.

(b) Regardless of whether adjudication is withheld, any person who knowingly actively assists in the illegal recruitment or solicitation of student athletes for a person who has been convicted or found guilty of, or entered a plea of nolo contendere to, a violation of this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089, or s. 775.091.

~~(3) In addition to any other penalties provided in this section, the court may suspend the license of the person pending the outcome of any administrative action against the person by the department.~~

(3) ~~(4)~~ (a) An athlete agent, with the intent to induce a student athlete to enter into an agent contract, may not:

1. Give any materially false or misleading information or make a materially false promise or representation;

2. Furnish anything of value to a student athlete before the student athlete enters into the agent contract; or

3. Furnish anything of value to any individual other than the student athlete or another athlete agent.

(b) An athlete agent may not intentionally:

1. ~~Initiate contact with a student athlete unless licensed under this part;~~

~~2.~~ Refuse or fail to retain or permit inspection of the records required to be retained by s. 468.4565;

~~3. Provide materially false or misleading information in an application for licensure;~~

2.~~4.~~ Predate or postdate an agent contract;

3.~~5.~~ Fail to give notice of the existence of an agent contract as required by s. 468.454(6); or

4.~~6.~~ Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agent contract for a sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

(c) An athlete agent who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 19. Section 468.4565, Florida Statutes, is amended to read:

468.4565 Business records requirement.—

~~(1)~~ An athlete agent shall establish and maintain complete financial and business records. The athlete agent shall save each entry into a financial or business record for at least 5 years after ~~from~~ the date of entry. These records must include:

(1)~~(a)~~ The name and address of each individual represented by the athlete agent;

(2)~~(b)~~ Any agent contract entered into by the athlete agent; and

(3)~~(c)~~ Any direct costs incurred by the athlete agent in

the recruitment or solicitation of a student athlete to enter into an agent contract.

~~(2) The department shall have access to and shall have the right to inspect and examine the financial or business records of an athlete agent during normal business hours. Refusal or failure of an athlete agent to provide the department access to financial and business records shall be the basis for disciplinary action by the department pursuant to s. 455.225. The department may exercise its subpoena powers to obtain the financial and business records of an athlete agent.~~

Section 20. Section 468.457, Florida Statutes, is repealed.

Section 21. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

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

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

~~business organization~~ shall, within 45 days after such change occurs, mail the correct information to the department.

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

(4)

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

~~qualifying agent~~ shall be noted thereon.

(6) Each qualifying agent shall pay the department an amount equal to the original fee for licensure ~~of a new business organization.~~ if the qualifying agent for a business organization desires to qualify additional business organizations.~~,~~ The department shall require the agent to present evidence of supervisory ability and financial responsibility of each such organization. Allowing a licensee to qualify more than one business organization must ~~shall~~ be conditioned upon the licensee showing that the licensee has both the capacity and intent to adequately supervise each business organization. The department may ~~shall~~ not limit the number of business organizations that ~~which~~ the licensee may qualify except upon the licensee's failure to provide such information as is required under this subsection or upon a finding that the ~~such~~ information or evidence ~~as is~~ supplied is incomplete or unpersuasive in showing the licensee's capacity and intent to comply with the requirements of this subsection. A qualification for an additional business organization may be revoked or suspended upon a finding by the department that the licensee has failed in the licensee's responsibility to adequately supervise the operations of the business organization. Failure to adequately supervise the operations of a business organization is ~~shall be~~ grounds for denial to qualify additional business organizations.

Section 22. Subsection (1) of section 469.009, Florida Statutes, is amended to read:

469.009 License revocation, suspension, and denial of issuance or renewal.—

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

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

(b) Violating any provision of chapter 455.

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

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

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

(f) Obtaining a license by fraud or misrepresentation.

(g) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in

any jurisdiction which directly relates to the practice of asbestos consulting or contracting or the ability to practice asbestos consulting or contracting.

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

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

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

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

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

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job

than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

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

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

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

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

(o) Committing fraud or deceit in the practice of asbestos consulting or contracting.

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

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

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

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

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

Section 23. Section 477.0132, Florida Statutes, is amended to read:

477.0132 Hair braiding~~, hair wrapping, and body wrapping~~ registration.—

(1)(a) Persons whose occupation or practice is confined solely to hair braiding must register with the department, pay the applicable registration fee, and take a two-day 16-hour course. The course shall be board approved and consist of 5 hours of HIV/AIDS and other communicable diseases, 5 hours of sanitation and sterilization, 4 hours of disorders and diseases of the scalp, and 2 hours of studies regarding laws affecting hair braiding.

(b) ~~Persons whose occupation or practice is confined solely to hair wrapping must register with the department, pay the applicable registration fee, and take a one-day 6-hour course. The course shall be board approved and consist of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.~~

~~(c) Unless otherwise licensed or exempted from licensure under this chapter, any person whose occupation or practice is body wrapping must register with the department, pay the applicable registration fee, and take a two-day 12-hour course. The course shall be board approved and consist of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.~~

~~(d)~~ Only the board may review, evaluate, and approve a course required of an applicant for registration under this subsection in the occupation or practice of hair braiding~~, hair wrapping, or body wrapping~~. A provider of such a course is not required to hold a license under chapter 1005.

(2) Hair braiding is~~, hair wrapping, and body wrapping are~~ not required to be practiced in a cosmetology salon or specialty salon. When hair braiding~~, hair wrapping, or body wrapping~~ is practiced outside a cosmetology salon or specialty salon, disposable implements must be used or all implements must be sanitized in a disinfectant approved for hospital use or approved by the federal Environmental Protection Agency.

(3) Pending issuance of registration, a person is eligible to practice hair braiding~~, hair wrapping, or body wrapping~~ upon

submission of a registration application that includes proof of successful completion of the education requirements and payment of the applicable fees required by this chapter.

Section 24. Subsections (7), (8), and (9) are added to section 477.0135, Florida Statutes, to read:

477.0135 Exemptions.—

(7) A license or registration is not required for a person whose occupation or practice is confined solely to adding polish to fingernails and toenails.

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

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

Section 25. Paragraph (b) of subsection (7) of section 477.019, Florida Statutes, is amended to read:

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

(7)

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

Section 26. Paragraph (f) of subsection (1) of section 477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.—

(1) The board shall set fees according to the following

schedule:

(f) For hair braiders, ~~hair wrappers, and body wrappers,~~ fees for registration shall not exceed $25.

Section 27. Paragraph (f) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

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

Section 28. Paragraph (a) of subsection (1) of section 477.029, Florida Statutes, is amended to read:

477.029 Penalty.—

(1) It is unlawful for any person to:

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

Section 29. Subsection (5) of section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part:

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

Section 30. Section 481.219, Florida Statutes, is amended to read:

481.219 Business organization; qualifying agents ~~Certification of partnerships, limited liability companies, and corporations~~.—

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

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

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

1. If the business is a partnership, state the names of the

partnership and its partners.

2. If the business is a corporation, state the names of the corporation and its officers and directors and the name of each of its stockholders who is also an officer or a director.

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

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

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

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

(b) The executive director or chair of the board may grant a temporary, nonrenewable certificate or registration to a licensee in supervising control, the president, a managing member, a partner, or, in the case of a limited partnership, the general partner for the purpose of allowing the business organization to begin or continue work required under an incomplete contract. Such person shall assume all of the responsibilities of a qualifying agent. For purposes of this paragraph, the term "incomplete contract" means a contract that has been awarded to, or entered into by, the business organization before the termination of affiliation of the qualifying agent with the business organization or a contract on which the business organization was the low bidder and that is subsequently awarded to the business organization, regardless of whether any actual work has commenced under the contract before termination of affiliation by the qualifying agent with the business organization.

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

~~this section~~.

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

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

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

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

(a) One or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, and all personnel of the

corporation, limited liability company, or partnership who act in its behalf in this state as architects, are registered as provided by this part.~~; or~~

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

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

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

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

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

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

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

(10) ~~(14)~~ A business organization that is qualified by a registered architect may ~~Corporations, limited liability companies, or partnerships holding a valid certificate of~~

~~authorization to practice architecture shall be permitted to~~ use ~~in their title~~ the term "interior designer" or "registered interior designer" in its title. ~~designer."~~

Section 31. Subsection (10) of section 481.221, Florida Statutes, is amended to read:

481.221 Seals; display of certificate number.—

(10) Each registered architect or interior designer or qualifying agent of a business organization must~~, and each corporation, limited liability company, or partnership holding a certificate of authorization, shall~~ include her or his license ~~its certificate~~ number in any newspaper, telephone directory, or other advertising medium used by the registered architect or~~,~~ interior designer, or business organization ~~corporation, limited liability company, or partnership~~. A business organization ~~corporation, limited liability company, or partnership~~ is not required to display the certificate number of individual registered architects or interior designers employed by or working within the business organization ~~corporation, limited liability company, or partnership~~.

Section 32. Paragraphs (a) and (c) of subsection (5) of section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

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

(c) Notwithstanding any other provision of this part, a registered architect or qualified business organization certified ~~any corporation, partnership, or person operating under a fictitious name which holds a certificate of authorization~~ to provide architectural services must ~~shall~~ be qualified, without fee, ~~for a certificate of authorization~~ to provide interior design services upon submission of a completed application for qualification ~~therefor~~. ~~For corporations, partnerships, and persons operating under a fictitious name which hold a certificate of authorization to provide interior design services, satisfaction of the requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of authorization to provide interior design services under that section.~~

Section 33. Section 481.303, Florida Statutes, is reordered and amended to read:

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

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

(3) ~~(2)~~ "Department" means the Department of Business and Professional Regulation.

(6) ~~(3)~~ "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

(2) ~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

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

~~the practice of landscape architecture.~~

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

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

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

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

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

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

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

Section 34. Subsection (5) of section 481.321, Florida Statutes, is amended to read:

481.321 Seals; display of certificate number.—

(5) Each registered landscape architect must ~~and each corporation or partnership holding a certificate of authorization shall~~ include her or his ~~its~~ certificate number in any newspaper, telephone directory, or other advertising medium used by the registered landscape architect, corporation, or partnership. A corporation or partnership must ~~is not required to~~ display the certificate number ~~numbers~~ of at least one officer, director, owner, or partner who is a ~~individual~~ registered landscape architect ~~architects~~ employed by or practicing with the corporation or partnership.

Section 35. Subsection (4) of section 481.311, Florida Statutes, is amended to read:

481.311 Licensure.—

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

Section 36. Subsection (2) of section 481.317, Florida Statutes, is amended to read:

481.317 Temporary certificates.—

~~(2) Upon approval by the board and payment of the fee set in s. 481.307, the department shall grant a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-~~

~~state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).~~

Section 37. Section 481.319, Florida Statutes, is amended to read:

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

(1) The practice of or offer to practice landscape architecture by registered landscape architects registered under this part through a corporation or partnership offering landscape architectural services to the public, or through a corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners, is permitted, subject to the provisions of this section, if:

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

(b) One or more of the officers, one or more of the directors, one or more of the owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect~~; and~~

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

(2) All documents involving the practice of landscape

architecture which are prepared for the use of the corporation or partnership shall bear the signature and seal of a registered landscape architect.

(3) A landscape architect applying to practice in the name of a ~~An applicant~~ corporation must ~~shall~~ file with the department the names and addresses of all officers and board members of the corporation, including the principal officer or officers, duly registered to practice landscape architecture in this state and, also, of all individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by the corporation in this state. A landscape architect applying to practice in the name of a ~~An applicant~~ partnership must ~~shall~~ file with the department the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice landscape architecture in this state and, also, of an individual or individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by said partnership in this state.

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

(5) ~~Disciplinary action against a corporation or~~

~~partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered landscape architect.~~

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

Section 38. Subsection (5) of section 481.329, Florida Statutes, is amended to read:

481.329 Exceptions; exemptions from licensure.—

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

Section 39. Subsection (14) of section 489.503, Florida Statutes, is amended, and subsection (24) is added to that section, to read:

489.503 Exemptions.—This part does not apply to:

(14) The sale of, installation of, repair of, alteration of, addition to, or design of electrical wiring, fixtures,

appliances, thermostats, apparatus, raceways, computers, customer premises equipment, customer premises wiring, and conduit, or any part thereof, ~~by an employee, contractor, subcontractor, or affiliate of a company operating under a certificate issued under chapter 364 or chapter 610, or under a local franchise or right-of-way agreement,~~ if those items are for the purpose of transmitting data, voice, video, or other communications, or commands as part of a cable television, community antenna television, radio distribution, communications, or telecommunications system. An employee, subcontractor, contractor, or affiliate of a company that operates under a certificate issued under chapter 364 or chapter 610, or under a local franchise or right-of-way agreement, is not subject to any local ordinance that requires a permit for work related to low-voltage electrical work, including related technical codes, regulations, and licensure. The scope of this exemption is limited to electrical circuits and equipment governed by the applicable provisions of Articles 725 (Classes 2 and 3 circuits only), 770, 800, 810, and 820 of the National Electrical Code, current edition, or 47 C.F.R. part 68~~, and employees, contractors, and subcontractors of companies, and affiliates thereof, operating under a certificate issued under chapter 364 or chapter 610 or under a local franchise or right-of-way agreement~~. This subsection does not relieve any person from licensure as an alarm system contractor.

(24) A person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation, wiring, or a modification to the electrical wiring in a structure.

Section 40. Present paragraphs (a) through (e) of subsection (2) of section 489.518, Florida Statutes, are redesignated as paragraphs (b) through (f), respectively, and a new paragraph (a) is added to that subsection, to read:

489.518 Alarm system agents.—

(2)(a) A person who performs only sales or installations of wireless alarm systems, other than fire alarm systems, in a single-family residence is not required to complete the initial training required for burglar alarm system agents.

Section 41. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 1052 (510850)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Hays
SUBJECT:	Environmental Control
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Howard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1052:

- Revises the number of letters required to provide proof of the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells from two letters to one letter.
- Exempts constructed clay settling areas at phosphate mines from rate of reclamation and financial assurance requirements where its beneficial use has been extended until the beneficial use of the area is completed.
- Allows land set-asides and land use modifications not otherwise required by state law or permit to be used to generate credits for water quality credit trading.
- Modifies the prohibition against granting variances that would result in the provision or requirement being less stringent than federal law. It authorizes moderating provisions or requirements under state law, subject to any necessary approval by the U.S. Environmental Protection Agency.
- Deletes the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund within the Department of Environmental Protection (DEP).
- Allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the facility closure or long-

term care activities if funds under the insurance policy or alternative forms of financial assurance are insufficient for these activities.
- Modifies conditions necessary for the DEP to use funds from the solid waste landfill closure account for the closing and long-term care of solid waste management facilities.
- Allows construction of a stormwater management system to proceed without any further agency action by the DEP or water management district (WMD) if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD which certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system meets all statutory requirements.
- Requires the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

There is a significant indeterminate fiscal impact to state funds related to solid waste facility closures or long-term care activities. The bill provides an effective date of July 1, 2016.

II. Present Situation:

Water Well Contractor Licenses

Section 373.336, F.S., provides that it is unlawful for any person to construct, repair, or abandon a water well, or operate drilling equipment for those purposes unless that person is employed by or under the supervision of a licensed water well contractor, subject to certain exemptions detailed in s. 373.326, F.S. Each person who engages in the business of a water well contractor must obtain a license from a water management district (WMD).[1] Persons must submit an application to the WMD in which they reside or in which his or her principal place of business is located.[2] In order to take the licensure exam, an applicant must be 18 years old; have at least two years of experience in constructing, repairing, or abandoning water wells; complete an application form; and pay a nonrefundable fee.[3]

To provide evidence that an applicant has at least two years of experience in constructing, repairing, or abandoning water wells, an applicant must submit a letter from a water well contactor and a letter from a water well inspector employed by a governmental agency. An applicant must also submit a list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.[4]

Clay Settling Areas

In Florida, phosphate mining occurs primarily in central Florida. There are 27 phosphate mines in the state covering more than 491,900 acres.[5] The Florida Legislature requires the reclamation of lands mined for phosphate after July 1, 1975. Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity,

[1] Section 373.323(1), F.S.
[2] Section 373.323(2), F.S.
[3] Section 373.323(3), F.S.
[4] *Id.*
[5] DEP, *Phosphate Mines*, http://www.dep.state.fl.us/water/mines/manpho.htm (last visited Jan. 15, 2016).

vegetation, and the return of wetlands to pre-mining type, nature, function, and acreage.[6] A byproduct of phosphate mining is clay, which is deposited in impoundment areas to allow additional settling of the clays.[7] Mining areas must be reclaimed after the completion of mining operations.[8] Reclamation of mining areas must be completed according to a schedule detailed in s. 379.209, F.S. If a mining operator cannot comply with the schedule, the operator must post one or more of several forms of security.[9]

The Department of Environmental Protection (DEP) has encouraged prolonged use of clay settling areas in order to minimize the total acreage used for settling, reduce reclamation delays in areas of the mine that are not used for clay settling, and reduce the number of dams that need to be built. Changes in mining practices to utilize clay-settling areas for longer periods of time have resulted in delays in reclamation of those areas, which has triggered the requirement for operators to post the required financial assurance.[10]

Water Quality Credit Trading

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries.[11]

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements.[12] Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for the discharger.[13] Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.[14]

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[6] *Id.*
[7] *Id.*
[8] Section 378.209(1), F.S.
[9] Section 378.208(2)(a)-(f), F.S.
[10] DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).
[11] DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 1 (Oct. 2010), *available at* http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf (last visited Jan. 15, 2016).
[12] *Id.* at 1-2.
[13] Lower St. Johns River TMDL Executive Committee, *Basin Management Action Plan: For the Implementation of Total Maximum Daily Loads for Nutrients Adopted by the Florida Department of Environmental Protection for the Lower St. Johns River Basin Main Stem*, 53 (October 2008), *available at* http://www.dep.state.fl.us/water/watersheds/docs/bmap/adopted-lsjr-bmap.pdf (last visited Jan. 14, 2016).
[14] DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 2 (Oct. 2010), *available at* http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf (last visited Jan. 14, 2016). *See also* Fla. Admin. Code R. 62-306, for rules pertaining to water quality credit trading in Florida.

Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.[15]

Pursuant to Florida Administrative Code Rule 60-306.400(1), activities that are potentially eligible to generate credits include, but are not limited to:

- Installation or modification of water pollution control equipment or activities that are not required to meet pollution control obligations that reduce nutrient loads below those required;
- Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrient discharged;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing the Department of Agriculture and Consumer Services;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below those required; and
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below those required.

Variances

The Florida Air and Water Pollution Control Act was enacted in 1967.[16] The legislative declaration states in part that, "[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water."[17]

Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for one of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution.
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required.

[15] *Id.*
[16] Chapter 67-436, Laws of Fla.
[17] Section 403.021(1), F.S.

- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.[18]

The State of Florida is granted authority from the federal government to administer programs such as the CWA, governing water pollution, and the Resource Conservation and Recovery Act (RCRA), governing hazardous waste management. "The most important feature of authorization is the State's agreement to issue permits that conform to the regulatory requirements of the law, to inspect and monitor activities subject to regulation, to take appropriate enforcement action against violators and to do so in a manner no less stringent than the Federal program."[19] Therefore, Florida Statutes prohibit any variance for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. However, research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.[20]

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:
- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.[21]

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering,[22] waste tire fees,[23] and oil related fees, fines and penalties.[24] The DEP must allocate funds deposited in the SWMTF in the following manner:
- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;

[18] Section 403.201(1)(a)-(c), F.S.
[19] DEP, *Hazardous Waste Regulation Section*, available at http://www.dep.state.fl.us/waste/categories/hwRegulation/ (last visited on January 18, 2016).
[20] Section 403.201(2), F.S.
[21] Fla. Admin. Code R. 62-4.050.
[22] Section 403.413(6)(a), F.S.
[23] Section 403.718(2), F.S.
[24] Section 403.759, F.S.

- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.[25]

Landfill Closure

The DEP is responsible for implementing and enforcing the state solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste.[26] Counties are responsible for operating solid waste disposal facilities, which are permitted by the DEP, in order to meet the needs of incorporated and unincorporated areas of the county.[27]

Florida Administrative Code Chapters 62-701 through 62-722 establish standards for the construction, operations, and closure of solid waste management facilities.[28] Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

- A closure design plan;
- A closure operation plan;
- A long-term care plan; and
- A demonstration that proof of financial assurance for long-term care will be provided.[29]

Every owner or operator of a landfill is liable for the improper operation and closure of a landfill.[30] The owner or operator of a landfill owned or operated by a local or state government or the Federal Government is required to establish a fee, a surcharge on existing fees, or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill.[31]

Operators of solid waste disposal units must receive a closure permit to close a landfill.[32] Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.[33]

These facilities must also perform long-term care for 30 years.[34] This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling

[25] Section 403.709(1), F.S.
[26] Section 403.705, F.S.
[27] Section 403.706, F.S.
[28] Fla. Admin. Code R. 62-701.100.
[29] Fla. Admin. Code R. 62-701.600(2).
[30] Section 403.7125(1), F.S.
[31] Section 403.7125(2), F.S.
[32] Fla. Admin. Code R. 62-701.600(2).
[33] Fla. Admin. Code R. 62-701.600(3)(f)2.
[34] Fla. Admin. Code R. 62-701.620(1)

subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.[35]

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the implementing bill for the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, and will expire July 1, 2016.[36]

The DEP provides that in cases where there is a viable insurance policy provided for the purposes of financial assurance, the contractor or the DEP can be reimbursed by the insurance company for the allowable closure costs covered by the financial assurance related insurance policy. Currently, there are five solid waste management facilities that are covered by insurance policies and require closure work by contractors to minimize adverse environmental impacts.[37]

General Permits

A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres.[38] When the stormwater management system is designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S., there is a rebuttable presumption that the discharge for such system will comply with state water quality standards. The construction of such a system may proceed without any further agency action by the DEP or water management district if, within 30 days after construction begins, an electronic self-certification is submitted to the DEP or applicable WMD that certifies the proposed system was designed by a Florida registered professional to meet the following requirements:

- The total project area involves less than 10 acres and less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;

[35] *Id.*
[36] Ch. 2015-222, s. 53, Laws of Fla.
[37] DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).
[38] Section 403.814, F.S.

- No activities are conducted in, on, or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan, development, or sale; and
- The project does not:
  - Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
  - Cause adverse impacts to existing surface water storage and conveyance capabilities;
  - Cause a violation of state water quality standards; or
  - Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042, F.S., or a work of the district established pursuant to s. 373.086, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 373.323, F.S., to change the number of letters attesting to the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells. The bill requires a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency, rather than letters from both.

Section 2 amends s. 378.209, F.S., to provide that when the beneficial use of a clay settling area has been extended, the rate of reclamation requirements and financial assurance requirements for phosphate mines do not become applicable until the beneficial use of the settling area is completed.

Section 3 amends s. 403.067, F.S., to allow the Department of Environmental Protection (DEP) to authorize the generation of credits for water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. The DEP provides that it already has this authority and has adopted rules that allow such trades.[39]

Section 4 amends s. 403.201, F.S., to modify the prohibition against granting a variance that would result in a provision or requirement being less stringent than federal law. The bill authorizes moderating provisions or requirements, subject to any necessary approval by the United States Environmental Protection Agency.

Section 5 amends s. 403.709, F.S., to delete the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund. The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities. Funds within the solid waste landfill closure account may be utilized for this purpose, if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the closing or long-term care of the facility, and the DEP has used all of the funds from the insurance policy or alternative form of financial assurance.

[39] *See* Fla. Admin. Code R. 62-306.400.

The bill amends the conditions necessary for the DEP to use funds from the solid waste landfill closure account to contract with a third party for the closing and long-term care of a solid waste management facility. Rather than just requiring that a permittee provided proof of financial assurance for closure in the form of an insurance certificate, the permittee must have provided proof of financial assurance when required by permit or rule and, rather than just requiring an insurance certificate, the permittee may have also provided an alternative form of financial assurance mechanism established pursuant to s. 403.7125, F.S.

Section 6 amends s. 403.814, F.S., to require, stormwater management systems to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to ch. 373, part IV, F.S. The bill changes the requirement for the timing of the submittal of an electronic self-certification from within 30 days after construction starts to before construction starts. As part of the self-certification submitted to the DEP or a WMD, the bill specifies that a Florida registered professional must certify that the proposed system will meet the specified requirements in addition to any requirements in part IV of ch. 373, F.S.

Section 7 reenacts s. 373.414(17), F.S., due to changes made by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1052 may have a positive indeterminate fiscal impact on phosphate mine operators by exempting them from the financial assurance requirements concerning the reclamation of a clay settling area when its beneficial use has been extended, until its beneficial use has been completed.

C. Government Sector Impact:

The Department of Environmental Protection (DEP) has requested $1,000,000 from the Solid Waste Management Trust Fund in their Fiscal Year 2016-2017 Legislative Budget Request to cover costs for closure and long-term care of facilities. The Senate has included this issue in SB 2500, the Fiscal Year 2016-2017 General Appropriations Bill.

The bill has no other fiscal impact to the DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if insufficient funds exist from the insurance policy or alternative forms of financial assurance, the Department of Environmental Protection (DEP) may use funds from the solid waste landfill closure account to cover costs. This language needs to be modified to provide that if insufficient funds exists, the DEP may use funds from the Solid Waste Management Trust Fund. The solid waste landfill closure account is only authorized to contain insurance policy funding or alternative forms of financial assurance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.323, 378.209, 403.067, 403.201, 403.709, and 403.814.

This bill reenacts 373.414 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 General Government on February 11, 2016:
The committee substitute:

- Removes language that provided incentives for water conservation by limiting the conditions under which a water management district (WMD) may lower allocations in consumptive use permits (CUPs) and directing the WMDs to adopt rule providing water conservation incentives;
- Removes language that makes revisions for certain membership qualifications for the Harris Chain of Lakes Restoration Council and authorization for the Lake County legislative delegation to waive membership qualifications based on good cause;
- Removes the requirement for the Department of Environmental Protection (DEP) to adopt by rule a surface water classification to protect surface waters used for treated potable water supply and to add treated potable waters supply as a designated use of surface water segments in certain circumstances;

- Removes prerequisites for the institution of flow control ordinances by local governments;
- Removes language prohibiting local governments from implementing flow control ordinances that would direct solid waste to a landfill gas-to-energy system of facility;
- Allows construction of a stormwater management system to proceed without any further agency action by the DEP or the WMD if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD that certifies that the proposed system was designed by a Florida registered professional, and that the registered professional has certified that the proposed system meets all statutory requirements;
- Adds language that in order for the DEP to contract for the closing and long-term care of a solid waste management facility, a permittee must have shown proof of financial assurance which can include an alternative form of financial assurance mechanism in addition to an insurance certificate;
- The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the facility closing or long-term care of the facility;
- Removes the appropriation from the Solid Waste Management Trust Fund in Fiscal Year 2016-2017 for the closure and long-term care of solid waste management facilities; and
- Requires, rather than encourages, the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

CS by Environmental Preservation and Conservation on January 20, 2016:
For constructed clay settling areas, the CS provides that if the beneficial use of a clay settling area has been extended, the rate of reclamation and financial assurance requirements do not become applicable until the beneficial use of the area is completed.

Section 403.709, F.S., establishes the solid waste landfill closure account within the Solid Waste Management Trust Fund. The subsection establishing the account expires July 1, 2016. The CS removes the sunset provision.

B. Amendments:

None.

377014

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 65 and 66
insert:
Section 2. Section 373.245, Florida Statutes, is repealed.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 5
and insert:

377014

examination; repealing s. 373.245, F.S., relating to violations of consumptive use permit conditions; amending s. 378.209, F.S.; exempting

658010

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment

Delete lines 111 - 140
and insert:
a department permit to operate the facility;
2. The permittee, when required by permit or rule, provided proof of financial assurance for closure in the form of an insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;
3. The department has ordered the facility closed or has

658010

deemed the facility abandoned ~~facility is deemed to be abandoned or was ordered to close by the department~~;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient ~~written~~ documentation to confirm that the issuer of the ~~insurance company issuing the closure~~ insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care of the facility.

(b) The department shall deposit all ~~the~~ funds received from the insurer or other parties for reimbursing ~~insurance company as reimbursement for~~ the costs of closing or long-term care of the facility under this subsection into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care under this subsection, and the department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing

510850

576-03419-16

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

A bill to be entitled

An act relating to environmental control; amending s. 373.323, F.S.; revising eligibility requirements for taking the water well contractor licensure examination; amending s. 378.209, F.S.; exempting certain constructed clay settling areas from reclamation rate and financial responsibility requirements; amending s. 403.067, F.S.; authorizing the use of land set-asides and land use modifications in water quality credit trading; amending s. 403.201, F.S.; providing applicability of prohibited variances concerning discharges of waste into waters of the state and hazardous waste management; amending s. 403.709, F.S.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste facilities; authorizing the department to contract with a third party for such closing and long-term care under certain conditions; requiring the department to deposit certain funds in the solid waste landfill closure account; authorizing the department to use funds from the solid waste landfill closure account to pay for facility closing and long-term care under certain circumstances; deleting an expiration date; amending s. 403.814, F.S.; requiring that a Florida registered professional certify that certain projects meet additional

510850

576-03419-16

requirements; requiring such certification to be submitted to the department before, rather than after, construction of a stormwater management system begins; reenacting s. 373.414(17), F.S., relating to variances for activities in surface waters and wetlands, to incorporate the amendment made by the act to s. 403.201, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or ~~and~~ a letter from a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been

constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 2. Subsection (4) is added to section 378.209, Florida Statutes, to read:

378.209 Timing of reclamation.—

(4) When the beneficial use of a constructed clay settling area has been extended, the rate of reclamation requirements in paragraphs (1)(a)-(e) and the requirements of s. 378.208 apply to such settling area when the beneficial use of such settling area is completed.

Section 3. Paragraph (i) is added to subsection (8) of section 403.067, Florida Statutes, to read:

403.067 Establishment and implementation of total maximum daily loads.—

(8) WATER QUALITY CREDIT TRADING.—

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, which reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

Section 4. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) A ~~No~~ variance may not ~~shall~~ be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715. However, this subsection does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

Section 5. Present subsections (2) through (4) of section 403.709, Florida Statutes, are redesignated as subsections (3) through (5), respectively, and present subsection (5) is amended, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(2)~~(5)(a)~~ Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.

(a) The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has, ~~or~~ had, or was not required to obtain a department permit to operate as a solid waste management ~~the~~ facility;

2. The permittee, when required by permit or rule, provided proof of financial assurance for closure in the form of an

insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has deemed the facility abandoned ~~facility is deemed to be abandoned or was ordered to close by the department~~;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient ~~written~~ documentation to confirm that the issuer of ~~insurance company issuing~~ the closure insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit all ~~the~~ funds received from the insurer or other parties for reimbursing ~~insurance company as reimbursement for~~ the costs of closing or long-term care of the facility into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient or is otherwise inaccessible to perform or complete the facility closing or long-term care under this subsection and the department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities ~~This subsection expires July 1, 2016~~.

Section 6. Subsection (12) of section 403.814, Florida

Statutes, is amended to read:

403.814 General permits; delegation.—

(12) A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres meeting the criteria of this subsection. Such ~~When the~~ stormwater management systems must be ~~system is~~ designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373.~~,~~ There is a rebuttable presumption that the discharge from ~~for~~ such systems complies ~~system will comply~~ with state water quality standards. The construction of such a system may proceed without any further agency action by the department or water management district if, before ~~within 30 days after~~ construction begins, an electronic self-certification is submitted to the department or water management district which ~~that~~ certifies that the proposed system was designed by a Florida registered professional, and that the registered professional has certified that the proposed system will ~~to~~ meet the following additional requirements:

(a) The total project area involves less than 10 acres and less than 2 acres of impervious surface;

(b) No activities will impact wetlands or other surface waters;

(c) No activities are conducted in, on, or over wetlands or other surface waters;

(d) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;

(e) The project is not part of a larger common plan,

development, or sale; and

(f) The project does not:

1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;

2. Cause adverse impacts to existing surface water storage and conveyance capabilities;

3. Cause a violation of state water quality standards; or

4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042 or a work of the district established pursuant to s. 373.086.

Section 7. For the purpose of incorporating the amendment made by this act to section 403.201, Florida Statutes, in a reference thereto, subsection (17) of section 373.414, Florida Statutes, is reenacted to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

Section 8. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1052
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Hays
SUBJECT:	Environmental Control
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Howard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1052:

- Provides incentives for water conservation by limiting the conditions under which a water management district (WMD) may lower allocations in consumptive use permits (CUPs), and directs the WMDs to adopt rules providing water conservation incentives, including limited permit extensions.
- Revises the number of letters required to provide proof of the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells from two letters to one letter.
- Revises certain membership qualifications for the Harris Chain of Lakes Restoration Council and authorizes the Lake County legislative delegation to waive membership qualifications based on good cause.
- Requires the WMDs to promote expanded cost-share criteria for additional conservation practices.
- Exempts constructed clay settling areas at phosphate mines from rate of reclamation and financial assurance requirements where its beneficial use has been extended until the beneficial use of the area is completed.
- Requires the Department of Environmental Protection (DEP) to adopt by rule a surface water classification to protect surface waters used for treated potable water supply and to add treated potable waters supply as a designated use of surface water segments in certain circumstances.

- Allows land set-asides and land use modifications not otherwise required by state law or permit to be used to generate credits for water quality credit trading.
- Modifies the prohibition against granting variances that would result in the provision or requirement being less stringent than federal law. It authorizes moderating provisions or requirements under state law, subject to any necessary approval by the U.S. Environmental Protection Agency.
- Deletes the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund within the DEP.
- Revises prerequisites for the institution of flow control ordinances by local governments.
- Provides that local governments may not implement flow control ordinances that would direct solid waste to a landfill gas-to-energy system of facility.

The bill provides a nonrecurring appropriation for Fiscal Year 2016-2017 of $2,339,764 from the Solid Waste Management Trust Fund for the closure and long-term care of solid waste management facilities.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Water Conservation and Consumptive Use Permitting

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing water management district (WMD) or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use";[1]
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[2]

Applicants may receive a CUP with duration of 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Otherwise, the WMD or the DEP may issue a CUP for a shorter duration which reflects the period for which such reasonable assurances can be provided.[3]

When a CUP is issued for a 20-year duration, a WMD or the DEP may require the permittee to provide a compliance report every 10 years during the term of the permit to maintain reasonable

[1] Section 373.019(16), F.S., defines reasonable-beneficial use as, "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.
[2] Section 373.223, F.S.
[3] Section 373.236, F.S.

assurance that the conditions of the CUP are being met.[4] Following review of a compliance report, the WMD or the DEP may modify the CUP to ensure that the use meets the conditions for issuance. Permit modifications resulting from review of the compliance report are not subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the WMD.[5]

In several WMDs, when economic conditions or population growth rates result in the actual water use being less than permitted water use, a modification to reduce the permitted allocation may be made by the WMD only when there is no reasonable likelihood that the allocation will be needed during the permit term.[6] However, in order to incentivize conservation of water, if actual water use is less than permitted water use due to documented implementation of water conservation measures, the WMD may not modify the permitted allocation due to these circumstances during the term of the permit.[7]

In addition, s. 373.227, F.S., requires the DEP, in cooperation with the WMDs, to develop a statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices to assist in tailoring practices to be effective for the unique characteristics of particular utility service areas, focusing upon cost-effective measures;
- Uses standardized public water supply conservation definitions and standardized quantitative and qualitative performance measures for an overall system of assessing and benchmarking the effectiveness of water conservation programs and practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities;
- Develops a standardized water conservation planning process for utilities; and
- Develops and maintains a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices.[8]

As part of an application for a CUP, a public water supply utility may propose a goal-based water conservation plan that is tailored to its individual circumstances. If the utility provides reasonable assurance that the plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the appropriate WMD, the WMD must approve the plan. The approved plan will satisfy water conservation requirements imposed as a condition of obtaining a CUP.[9]

[4] Section 373.236(4), F.S.
[5] *Id.*
[6] Fla. Admin. Code R. 62-40.410.
[7] Fla. Admin. Code R. 62-40.412.
[8] Section 373.227(2), F.S.
[9] Section 373.227(4), F.S.

Water Quality Standards (WQSs)

Under s. 303 of the Federal Clean Water Act (CWA), states are incentivized to adopt WQSs for their navigable waters and must review and update those standards at least once every three years.[10] These standards include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that a waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.[11]

The CWA requires that the surface waters of each state be classified according to their designated uses.[12] Florida has six classes that are arranged in order of the degree of protection required:

- Class I - Potable water supply;
- Class II - Shellfish propagation or harvesting;
- Class III - Fish consumption, recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife;
- Class III Limited - Fish consumption, recreation or limited recreation, and/or propagation and maintenance of a limited population of fish and wildlife;
- Class IV - Agricultural water supplies; and
- Class V - Navigation, utility, and industrial use.[13]

Each class has specific water quality criteria that must be met to maintain that classification.[14] Criteria applicable to a classification are designed to maintain the minimum conditions necessary to assure the suitability of water for the designated use of the classification. Activities allowed under a lower classification are allowable when withdrawing water from higher class waters. So, for example, a Class II surface water may also be used for any other use except for Class I purposes.[15]

Reclassification

Reclassification of a waterbody's designated beneficial use can be initiated by the DEP or by petition from another entity. A designation may be upgraded, but there must be credible information showing the existence or attainability of the beneficial use. For example, a waterbody designated as Class III may be upgraded to Class II if there is credible information

[10] 33 U.S.C. s. 1313(b)(1) and (c)(4). If states do not submit water quality standards within a certain time, or if the standards are not consistent with certain requirements, the EPA may step in and establish water quality standards.
[11] 33 U.S.C. s. 1313(c)(2)(A); 40 C.F.R. ss. 131.6 and 131.10-131.12.
[12] 33 U.S.C. s. 1313(c).
[13] Fla. Admin. Code R. 62-302.400.
[14] *See* Fla. Admin. Code R. 62-302.500 and 62-302.530.
[15] Fla. Admin. Code R. 62-302.400(6).

showing that shellfish harvesting and consumption are routinely conducted in the waterbody and that the water quality criteria for Class II is attainable.[16]

For a waterbody to be considered for reclassification as a drinking water source, a petitioner must demonstrate that the water quality meets Class I water quality criteria or can meet those criteria after conventional treatment. Potential influences of reclassification on other users of the waterbody must be evaluated and permitting requirements must also be considered.[17]

Petitions to add a waterbody's designated use as drinking water source should determine if it is an existing use (now or since 1975) or an attainable use. Factors to consider when determining whether the use is an existing use can include the presence of drinking water withdrawals and permits authorizing withdrawal for consumptive use. Factors to consider when determining whether the designation is an attainable use can include proximity to wastewater sources and effects on water quality.[18]

Water Well Contractor Licenses

Section 373.336, F.S., provides that it is unlawful for any person to construct, repair, or abandon a water well, or operate drilling equipment for those purposes unless that person is employed by or under the supervision of a licensed water well contractor, subject to certain exemptions detailed in s. 373.326, F.S. Each person who engages in the business of a water well contractor must obtain a license from a WMD.[19] Persons must submit an application to the WMD in which they reside or in which his or her principal place of business is located.[20] In order to take the licensure exam, an applicant must be 18 years old; have at least two years of experience in constructing, repairing, or abandoning water wells; complete an application form; and pay a nonrefundable fee.[21]

To provide evidence that an applicant has at least two years of experience in constructing, repairing, or abandoning water wells, an applicant must submit a letter from a water well contactor and a letter from a water well inspector employed by a governmental agency. An applicant must also submit a list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.[22]

[16] DEP, *Process for Reclassifying the Designated Uses of Florida Surface Waters* 7, (June, 2010), *available at* http://www.dep.state.fl.us/water/wqssp/docs/reclass/process_document_080510.pdf (last visited Jan. 15, 2016).
[17] *Id.* at 7-8.
[18] *Id.* at 6-7.
[19] Section 373.323(1), F.S.
[20] Section 373.323(2), F.S.
[21] Section 373.323(3), F.S.
[22] *Id.*

The Harris Chain of Lakes Restoration Council

The Harris Chain of Lakes is located north and west of the Orlando metropolitan area and is in Lake and Orange counties.[23] It contains tens of thousands of acres of lakes and wetlands and is at the headwaters of the Ocklawaha River.[24] The Harris Chain of Lakes Council was created to:

- Review audits and all data related to lake restoration techniques and sport fish population recovery strategies;
- Evaluate whether additional studies are needed;
- Explore all possible sources of funding to conduct the restoration activities; and
- Report to the President of the Senate and the Speaker of the House of Representatives yearly before November 25 on the progress of the Harris Chain of Lakes restoration program and provide any recommendations for the next fiscal year.[25]

The council consists of nine voting members who are:

- A representative of waterfront property owners;
- A representative of the sport fishing industry;
- An environmental engineer;
- A person with training in biology or another scientific discipline;
- A person with training as an attorney;
- A physician;
- A person with training as an engineer; and
- Two residents of Lake County appointed by the Lake County legislative delegation who do not meet any of the other qualifications for membership on the council.[26]

The council works with an advisory group composed of regional, state, and federal entities.[27]

Clay Settling Areas

In Florida, phosphate mining occurs primarily in central Florida. There are 27 phosphate mines in the state covering more than 491,900 acres.[28] The Florida Legislature requires the reclamation of lands mined for phosphate after July 1, 1975. Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity, vegetation, and the return of wetlands to pre-mining type, nature, function, and acreage.[29] A byproduct of phosphate mining is clay, which is deposited in impoundment areas to allow additional settling of the clays.[30] Mining areas must be reclaimed after the completion of mining operations.[31] Reclamation of mining areas must be completed according to a schedule detailed in

[23] Harris Chain of Lakes Restoration Council, *Where is the Harris Chain of Lakes and What Does the Restoration Council Do?*, http://harrischainoflakescouncil.com/ (last visited Jan. 15, 2016).
[24] *Id*.
[25] *Id*.
[26] Section 373.467, F.S.
[27] *Id*.
[28] DEP, *Phosphate Mines*, http://www.dep.state.fl.us/water/mines/manpho.htm (last visited Jan. 15, 2016).
[29] *Id*.
[30] *Id*.
[31] Section 378.209(1), F.S.

s. 379.209, F.S. If a mining operator cannot comply with the schedule, the operator must post one or more of several forms of security.[32]

The DEP has encouraged prolonged use of clay settling areas in order to minimize the total acreage used for settling, reduce reclamation delays in areas of the mine that are not used for clay settling, and reduce the number of dams that need to be built. Changes in mining practices to utilize clay-settling areas for longer periods of time have resulted in delays in reclamation of those areas, which has triggered the requirement for operators to post the required financial assurance.[33]

Water Quality Credit Trading

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries.[34]

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements.[35] Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for the discharger.[36] Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.[37]

Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or

[32] Section 378.208(2)(a)-(f), F.S.
[33] DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).
[34] DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 1 (Oct. 2010), *available at* http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf (last visited Jan. 15, 2016).
[35] *Id.* at 1-2.
[36] Lower St. Johns River TMDL Executive Committee, *Basin Management Action Plan: For the Implementation of Total Maximum Daily Loads for Nutrients Adopted by the Florida Department of Environmental Protection for the Lower St. Johns River Basin Main Stem*, 53 (October 2008), *available at* http://www.dep.state.fl.us/water/watersheds/docs/bmap/adopted-lsjr-bmap.pdf (last visited Jan. 14, 2016).
[37] DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 2 (Oct. 2010), *available at* http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf (last visited Jan. 14, 2016). *See also* Fla. Admin. Code R. 62-306, for rules pertaining to water quality credit trading in Florida.

increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.[38]

Pursuant to Florida Administrative Code Rule 60-306.400(1), activities that are potentially eligible to generate credits include, but are not limited to:

- Installation or modification of water pollution control equipment or activities that are not required to meet pollution control obligations that reduce nutrient loads below those required;
- Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrient discharged;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing the Department of Agriculture and Consumer Services;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below those required; and
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below those required.

Variances

The Florida Air and Water Pollution Control Act was enacted in 1967.[39] The legislative declaration states in part that, "[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water."[40]

Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for one of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution.
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required.
- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.[41]

The State of Florida is granted authority from the federal government to administer programs such as the CWA, governing water pollution, and the Resource Conservation and Recovery Act (RCRA), governing hazardous waste management. "The most important feature of authorization is the State's agreement to issue permits that conform to the regulatory requirements of the law,

[38] *Id.*
[39] Chapter 67-436, Laws of Fla.
[40] Section 403.021(1), F.S.
[41] Section 403.201(1)(a)-(c), F.S.

to inspect and monitor activities subject to regulation, to take appropriate enforcement action against violators and to do so in a manner no less stringent than the Federal program."[42] Therefore, Florida Statutes prohibit any variance for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. However, research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.[43]

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.[44]

Flow Control Ordinances

Flow control ordinances are ordinances implemented by a local government to require haulers to dispose of solid waste at government-approved waste facilities or within a specific geographic jurisdiction.[45] Flow control ordinances are used to assure that the designated facility or facilities are assured of receiving a guaranteed amount of waste so that they are assured a source of revenue to meet their capital costs.[46]

> Use of flow controls took hold in the late 1970s. State and local governments began using flow controls to support the development of new waste management facilities, particularly those requiring relatively large capital investments such as waste to-energy (WTE) facilities and high-technology materials recovery facilities (MRFs). Flow controls were one mechanism state and local governments could use to help finance these costly facilities. To construct these facilities, local governments often issued revenue bonds, which were to be repaid out of the revenues (tipping fees) the facilities generated. Flow controls ensured receipt of enough waste or recyclable materials to generate sufficient revenue to pay facility debt service and other fixed costs.

[42] DEP, *Hazardous Waste Regulation Section*, available at http://www.dep.state.fl.us/waste/categories/hwRegulation/ (last visited on January 18, 2016).
[43] Section 403.201(2), F.S.
[44] Fla. Admin. Code R. 62-4.050.
[45] Note that flow control ordinances that benefit of publically owned facilities do not violate the U.S. Commerce Clause even though they provide a particular benefit to in-state interests because they treat all private businesses the same way. *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330 (2007).
[46] U.S. Env. Protection Agency, *Report to Congress on Flow Control and Municipal Solid Waste*, I-3 (1992), *available at* http://www3.epa.gov/epawaste/nonhaz/municipal/landfill/flowctrl.htm.

Section 403.713, F.S., authorizes local governments to control the collection and disposal of solid waste and institute a flow control ordinances for the purpose of ensuring that a resource recovery[47] facility receives an adequate quantity of solid waste.

Landfill Gas-to-Energy Systems

Landfill gas (LFG) is created when organic waste in a solid waste landfill decomposes.[48] This gas consists of about 50% methane (the primary component of natural gas), about 50% carbon dioxide (CO2), and a small amount of non-methane organic compounds (NMOCs).[49] Instead of being allowed to escape into the air, LFG can be captured, converted, and used as an energy source.[50] Using LFG helps to reduce odors and other hazards associated with LFG emissions, and helps prevent methane from migrating into the atmosphere and contributing to local smog and global climate change.[51]

In 2010 Orange County, Florida, and the Orlando Utilities Commission won an award from the U.S. Environmental Protection Agency (EPA) as part of its Landfill Methane Outreach Program. The landfill is one of the largest in the country and in 2010 the EPA found that:

- The carbon sequestered annually was the equivalent of 12,100 acres of pine or fir forests, annual greenhouse gas emissions from 10,900 passenger vehicles, or carbon dioxide emissions from 132,500 barrels of oil consumed;
- The annual energy savings equate to powering 7,300 homes; and
- The revenue generated to Orange County each year for landfill gas rights was $400,000.[52]

In 2015, Sarasota County in partnership with Aria Energy opened a landfill gas-to-energy facility in Sarasota County. The facility is estimated to produce enough energy to power 2,800 homes and reduce carbon dioxide emissions by 236,000 metric tons.[53]

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering,[54] waste tire fees,[55] and oil related fees, fines and penalties.[56] The DEP must allocate funds deposited in the SWMTF in the following manner:

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[47] Resource recovery is defined as "the process of recovering materials or energy from solid waste, excluding those materials or solid waste under control of the Nuclear Regulatory Commission." Fla. Admin. Code R. 62-701.200.
[48] U.S. Env. Protection Agency, LFG Energy Projects, http://www.epa.gov/outreach/lmop/faq/lfg.html (last visited Jan 14, 2016).
[49] Id.
[50] Id.
[51] *Id*.
[52] U.S. Env. Protection Agency, *Project Profile* (2010), http://www3.epa.gov/lmop/projects-candidates/profiles/orangecountyfloridaandorl.html (last visited January 18, 2016).
[53] Sarasota County, *Landfill Gas to Energy Facility: Fact Sheet* (May 2015), https://www.scgov.net/Solid_Waste/Documents/Landfill%20Gas-to-Energy%20Fact%20Sheet.pdf (last visited January 18, 2016).
[54] Section 403.413(6)(a), F.S.
[55] Section 403.718(2), F.S.
[56] Section 403.759, F.S.

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.[57]

Landfill Closure

The DEP is responsible for implementing and enforcing the state solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste.[58] Counties are responsible for operating solid waste disposal facilities, which are permitted by the DEP, in order to meet the needs of incorporated and unincorporated areas of the county.[59]

Florida Administrative Code Chapters 62-701 through 62-722 establish standards for the construction, operations, and closure of solid waste management facilities.[60] Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

- A closure design plan;
- A closure operation plan;
- A long-term care plan; and
- A demonstration that proof of financial assurance for long-term care will be provided.[61]

Every owner or operator of a landfill is liable for the improper operation and closure of a landfill.[62] The owner or operator of a landfill owned or operated by a local or state government or the Federal Government is required to establish a fee, a surcharge on existing fees, or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill.[63]

[57] Section 403.709(1), F.S.
[58] Section 403.705, F.S.
[59] Section 403.706, F.S.
[60] Fla. Admin. Code R. 62-701.100.
[61] Fla. Admin. Code R. 62-701.600(2).
[62] Section 403.7125(1), F.S.
[63] Section 403.7125(2), F.S.

Operators of solid waste disposal units must receive a closure permit to close a landfill.[64] Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.[65]

These facilities must also perform long-term care for 30 years.[66] This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.[67]

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the implementing bill for the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, and will expire July 1, 2016.[68]

The DEP provides that in cases where there is a viable insurance policy provided for the purposes of financial assurance, the contractor or the DEP can be reimbursed by the insurance company for the allowable closure costs covered by the financial assurance related insurance policy. Currently, there are five solid waste management facilities that are covered by insurance policies and require closure work by contractors to minimize adverse environmental impacts.[69]

III. Effect of Proposed Changes:

Section 1 amends s. 373.227, F.S., to:

- Prohibit modification of a consumptive use permit (CUP) allocation during the permit term if documented conservation measures beyond those required in the CUP, including best management practices, result in decreased water use, and require water management districts

[64] Fla. Admin. Code R. 62-701.600(2).
[65] Fla. Admin. Code R. 62-701.600(3)(f)2.
[66] Fla. Admin. Code R. 62-701.620(1)
[67] *Id.*
[68] Ch. 2015-222, s. 53, Laws of Fla.
[69] DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

(WMDs) to adopt rules providing water conservation incentives, which may include limited permit extensions; and
- Prohibit the reduction of permitted water use authorized by a CUP for agricultural irrigation during the term of the CUP if actual water use is less than permitted use due to weather, crop disease, nursery stock availability, market conditions, or changes in crop type.

Section 2 amends s. 373.323, F.S., to change the number of letters attesting to the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells. The bill requires a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency, rather than letters from both.

Section 3 amends s. 373.467, F.S., to revise the membership requirements for the Harris Chain of Lakes Restoration Council. One member must be a person with experience in environmental science or regulation, rather than an environmental engineer. It requires an attorney and an engineer, rather than individuals that have training in either discipline. It also clarifies that the two members, who are residents of the county, are not required to meet any of the other requirements of membership to be appointed to the council. As the statute is currently written, it appears those two members are prohibited from meeting any of the other requirements for membership. The bill provides that the Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis for good cause. The bill provides that resignation by a council member, or removal of a council member for failure to attend three consecutive meetings without an excuse approved by the chair of the committee results in a vacancy on the council.

Section 4 amends s. 373.705, F.S., to require the WMDs to promote expanded cost-share criteria for additional conservation practices, such as soil and moisture sensors and other irrigation improvements, water-saving equipment, and water-saving household fixtures, and software technologies that can achieve verifiable water conservation by providing water use information to utility customers.

Section 5 amends s. 378.209, F.S., to provide that if the beneficial use of a clay settling area has been extended, the rate of reclamation requirements and financial assurance requirements for phosphate mines do not become applicable until the beneficial use of the area is completed.

Section 6 amends s. 403.061, F.S., to require the Department of Environmental Protection (DEP) to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. Waters classified under this section must have the same water quality criteria as that for Class III waters. This new classification will allow utilities to withdraw water for potable use from a waterbody classified as Class II or III, so long as it does not require significant alteration of permitted treatment processes or prevent compliance with applicable state drinking water standards. Regardless, this classification or the inclusion of treated water supply as a designated use of a surface water does not prevent a surface water used for treated potable water supply from being reclassified as water designated for potable water supply (Class I).

Section 7 amends s. 403.067, F.S., to allow the DEP to authorize the generation of credits for water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. The DEP provides that it already has this authority and has adopted rules that allow such trades.[70]

Section 8 amends s. 403.201, F.S., to modify the prohibition against granting a variance that would result in a provision or requirement being less stringent than federal law. The bill authorizes moderating provisions or requirements, subject to any necessary approval by the United States Environmental Protection Agency.

Section 9 amends s. 403.709, F.S., to delete the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund.

Section 10 amends s. 403.713, F.S., to provide that a local government may only institute a flow control ordinance after it owns, and actively uses, a resource recovery facility and the local government proves the necessity of instituting flow control to ensure sufficient materials for that facility. The bill also provides that a flow control ordinance does not limit the ability of other entities and districts to contract for waste management services.

The bill also specifies that landfill gas-to-energy systems or facilities are not a resource recovery facility for purposes of exercising flow control authority, meaning that flow control ordinances may not be enacted that require waste to be sent to a landfill gas-to-energy system or facility.

Section 11 amends s. 403.861, F.S., to require the DEP to establish rules concerning the use of surface waters for treated potable public water supply.

The bill provides that when a construction permit is issued to construct a new public water system drinking water treatment facility to provide potable water using a surface water of the state that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the DEP must add treated potable water supply as a designated use of the surface water segment.

The bill provides that for existing public water system drinking water treatment facilities that use a surface water of the state as a treated potable water supply, and the surface water classification does not include potable water as a designated use, the DEP shall add treated potable water supply as a designated use of the surface water segment.

Section 12 reenacts s. 373.414(17), F.S., due to changes made by the bill.

Section 13 provides an appropriation for the 2016-2017 fiscal year of $2,339,764 in nonrecurring funds to the DEP from the Solid Waste Management Trust Fund for the closing and

[70] *See* Fla. Admin. Code R. 62-306.400.

long-term care of solid waste management facilities. The DEP has requested $1,000,000 for Fiscal Year 2016-2017 in its Legislative Budget Request for similar closure activities.[71]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1052 may have a negative, indeterminate fiscal impact on rate payers if potable water supply systems must use more expensive treatment options in order to treat water from a Class III water body and if those costs are passed on to rate payers. The Department of Environmental Protection (DEP) reports that this is possible but unlikely.[72]

The bill may have a positive, indeterminate fiscal impact on phosphate mine operators by exempting them from the financial assurance requirements concerning the reclamation of a clay settling area when its beneficial use has been extended, until its beneficial use has been completed.

C. Government Sector Impact:

The bill could have a negative, indeterminate fiscal impact on local governments if a flow control ordinance may only be adopted after a local government owns, actively uses, and proves the necessity of instituting flow control when securing funding for a resource recovery facility.

[71] DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).
[72] *Id*.

The bill provides a nonrecurring appropriation for Fiscal Year 2016-2017 of $2,339,764 from the Solid Waste Management Trust Fund for the closure and long-term care of solid waste management facilities.

The DEP will absorb the costs of rulemaking with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 5 of the bill states that reclamation requirements do not apply to a constructed clay settling area "if the beneficial use of such area has been extended." This wording is somewhat unclear. There is no provision in statute or rule that defines what "beneficial use" is in relation to clay settling areas or who determines whether the beneficial use has been completed.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.227, 373.323, 373.467, 373.705, 378.209, 403.061, 403.067, 403.201, 403.709, 403.713, and 403.861.

This bill reenacts 373.414 of the Florida Statutes.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on January 20, 2016:
For constructed clay settling areas, the CS provides that if the beneficial use of a clay settling area has been extended, the rate of reclamation and financial assurance requirements do not become applicable until the beneficial use of the area is completed.

Section 403.709, F.S., establishes the solid waste landfill closure account within the Solid Waste Management Trust Fund. The subsection establishing the account expires July 1, 2016. The CS removes the sunset provision.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Hays

592-02359-16 20161052c1

A bill to be entitled

An act relating to environmental control; amending s. 373.227, F.S.; prohibiting water management districts from modifying or reducing consumptive use permit allocations if actual water use is less than permitted water use due to water conservation measures or specified circumstances; requiring water management districts to adopt rules providing water conservation incentives, including permit extensions; amending s. 373.323, F.S.; revising eligibility requirements for taking the water well contractor licensure examination; amending s. 373.467, F.S.; revising membership qualifications for the Harris Chain of Lakes Restoration Council; authorizing the Lake County legislative delegation to waive such membership qualifications for good cause; providing that resignation or removal of a council member results in a council vacancy; amending s. 373.705, F.S.; requiring water management districts to promote expanded cost-share criteria for additional conservation practices; amending s. 378.209, F.S.; exempting certain constructed clay settling areas from reclamation rate and financial responsibility requirements under certain conditions; amending s. 403.061, F.S.; requiring the Department of Environmental Protection to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply; providing criteria for such rule; authorizing the reclassification of surface waters used for treated potable water supply notwithstanding such rule;

592-02359-16 20161052c1

amending s. 403.067, F.S.; authorizing the use of land set-asides and land use modifications, including constructed wetlands or other water quality improvement projects, in water quality credit trading; amending s. 403.201, F.S.; providing applicability of prohibited variances concerning discharges of waste into waters of the state and hazardous waste management; amending s. 403.709, F.S.; making technical changes; deleting a scheduled repeal date; amending s. 403.713, F.S.; authorizing local governments to implement a flow control ordinance only upon ownership and utilization of a resource recovery facility and a proven need of flow control for the facility; excluding landfill gas-to-energy systems and facilities from being classified as resource recovery facilities under certain circumstances; amending s. 403.861, F.S.; requiring the department to add treated potable water supply as a designated use of a surface water segment under certain circumstances; reenacting s. 373.414(17), F.S., relating to variances for activities in surface waters and wetlands, to incorporate the amendment made by the act to s. 403.201, F.S., in a reference thereto; providing an appropriation; providing an effective date.

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

Section 1. Present subsection (5) of section 373.227, Florida Statutes, is renumbered as subsection (7), and new

subsections (5) and (6) are added to that section, to read:

373.227 Water conservation; legislative findings and intent; objectives; comprehensive statewide water conservation program requirements.—

(5) To incentivize water conservation, if actual water use is less than permitted water use due to documented implementation of water conservation measures beyond those required in a consumptive use permit, including, but not limited to, those measures identified in best management practices pursuant to s. 570.93, the permitted allocation may not be modified solely due to such water conservation during the term of the permit. To promote water conservation and the implementation of measures that produce significant water savings beyond those required in a consumptive use permit, each water management district shall adopt rules providing water conservation incentives, which may include limited permit extensions.

(6) For consumptive use permits for agricultural irrigation, if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, market conditions, or changes in crop type, a district may not, as a result, reduce permitted allocation amounts during the term of the permit.

Section 2. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure

examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or ~~and~~ a letter from a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 3. Paragraph (a) of subsection (1) and subsection (3) of section 373.467, Florida Statutes, are amended to read:

373.467 The Harris Chain of Lakes Restoration Council.—There is created within the St. Johns River Water Management District, with assistance from the Fish and Wildlife Conservation Commission and the Lake County Water Authority, the Harris Chain of Lakes Restoration Council.

(1)(a) The council shall consist of nine voting members,

which shall include: a representative of waterfront property owners, a representative of the sport fishing industry, a person with experience in an environmental science or regulation engineer, a person with training in biology or another scientific discipline, a person with training as an attorney, a physician, a person with training as an engineer, and two residents of the county who are do not required to meet any additional of the other qualifications for membership enumerated in this paragraph, each to be appointed by the Lake County legislative delegation. The Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis if good cause is shown. A No person serving on the council may not be appointed to a council, board, or commission of any council advisory group agency. The council members shall serve as advisors to the governing board of the St. Johns River Water Management District. The council is subject to the provisions of chapters 119 and 120.

(3) The council shall meet at the call of its chair, at the request of six of its members, or at the request of the chair of the governing board of the St. Johns River Water Management District. Resignation by a council member, or removal of a council member for failure to attend three consecutive meetings without an excuse approved by the chair, shall result in a vacancy on the council.

Section 4. Subsection (5) is added to section 373.705, Florida Statutes, to read:

373.705 Water resource development; water supply development.—

(5) The water management districts shall promote expanded

cost-share criteria for additional conservation practices, such as soil and moisture sensors and other irrigation improvements, water-saving equipment, water-saving household fixtures, and software technologies that can achieve verifiable water conservation by providing water use information to utility customers.

Section 5. Subsection (4) is added to section 378.209, Florida Statutes, to read:

378.209 Timing of reclamation.—

(4) If the beneficial use of a constructed clay settling area has been extended, the rate of reclamation requirements in paragraphs (1)(a)-(e) and the requirements of s. 378.208 shall become applicable for such area when the beneficial use of such area is completed.

Section 6. Subsection (29) of section 403.061, Florida Statutes, is amended to read:

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

(29)(a) Adopt by rule special criteria to protect Class II and Class III shellfish harvesting waters. Such rules may include special criteria for approving docking facilities that have 10 or fewer slips if the construction and operation of such facilities will not result in the closure of shellfish waters.

(b) Adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. These designated surface waters shall have the same water quality criteria protections as waters designated for fish

consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife, and shall be free from discharged substances at a concentration that, alone or in combination with other discharged substances, would require significant alteration of permitted treatment processes at the permitted treatment facility or that would otherwise prevent compliance with applicable state drinking water standards in the treated water. Notwithstanding this classification or the inclusion of treated water supply as a designated use of a surface water, a surface water used for treated potable water supply may be reclassified to the potable water supply classification.

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

Section 7. Paragraph (i) is added to subsection (8) of section 403.067, Florida Statutes, to read:

403.067 Establishment and implementation of total maximum daily loads.—

(8) WATER QUALITY CREDIT TRADING.—

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

Section 8. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) A ~~No~~ variance may not ~~shall~~ be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715. However, this subsection does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

Section 9. Subsection (5) of section 403.709, Florida Statutes, is amended to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(5)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has or had a department permit to operate as a solid waste management ~~the~~ facility;

2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate;

3. The department deemed the facility ~~is deemed~~ to be abandoned or ~~was~~ ordered the facility to close ~~by the department~~;

4. Closure is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of the closure ~~closing~~ or long-term care of the facility into the solid waste landfill closure account.

~~(c) This subsection expires July 1, 2016.~~

Section 10. Subsection (2) of section 403.713, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

403.713 Ownership and control of solid waste and recovered materials.—

(2) Any local government that ~~which~~ undertakes resource recovery from solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction. Such authority does ~~shall~~ not extend to recovered materials, whether separated at the point of generation or after collection, which ~~that~~ are intended to be held for purposes of recycling pursuant to the requirements of this part; however, the handling of such materials is ~~shall be~~ subject to applicable state and local public health and safety laws. A flow control ordinance may be instituted under this section by a local government only after it owns, and actively

uses, a resource recovery facility and the local government proves the necessity of instituting flow control to ensure sufficient materials for that resource recovery facility. A flow control ordinance also does not limit the ability of other entities and districts to contract for waste management services.

(3) For the purposes of exercising flow control authority under this section, a resource recovery facility does not include a landfill gas-to-energy system or facility.

Section 11. Subsection (21) is added to section 403.861, Florida Statutes, to read:

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply using a surface water that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(29)(b).

(b) For existing public water system drinking water treatment facilities that use a surface water as a treated potable water supply, which surface water classification does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(29)(b).

Section 12. For the purpose of incorporating the amendment made by this act to section 403.201, Florida Statutes, in a reference thereto, subsection (17) of section 373.414, Florida Statutes, is reenacted to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

Section 13. For the 2016-2017 fiscal year, the sum of $2,339,764 in nonrecurring funds is appropriated to the Department of Environmental Protection from the Solid Waste Management Trust Fund in the Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category for the closing and long-term care of solid waste management facilities.

Section 14. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1060
INTRODUCER:	Senator Legg
SUBJECT:	Career and Adult Education
DATE:	February 19, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Scott	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 1060 updates terminology and expands opportunities and requirements related to career and adult education. Specifically, the bill:

- Updates, revises, and expands terminology and criteria to align statutory law to federal guidelines and regulations regarding apprenticeship programs.
- Increases the number of Career and Professional Education (CAPE) Digital Tool certificates that can be earned by elementary and middle school students, and approved annually on the CAPE Industry Certification Funding List.
- Requires school district career centers and charter technical career centers to establish financial aid appeal procedures for students seeking redress of grievances.

The bill has no impact on state funds. The increase in the number of CAPE Digital Tool certificates made available on the CAPE Industry Certification Funding List may result in an increase in the number of students eligible to generate additional full-time equivalent (FTE) funding to school districts. Each CAPE Digital Tool certificate generates 0.025 FTE, which would generate approximately $104 in additional funding for each certificate earned in the 2015-2016 fiscal year.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Apprenticeship Programs

Federal Program Requirements

The United States Congress enacted the National Apprenticeship Act (also known as the Fitzgerald Act in honor of its author, Congressman William J. Fitzgerald)[1] in 1937.[2] Following the passage of the act, Registered Apprenticeship (RA) programs consisted mainly of manufacturing, construction, and utilities industries.[3] In 2008, revised regulations were issued by the U.S. Department of Labor which increase program flexibility to better serve the needs of today's apprentices and program sponsors.[4]

For apprentices and program sponsors, the regulations:[5]
- Incorporate technology-based learning;
- Provide additional pathways to certification;
- Introduce interim credentials;
- Improve registration and review process;
- Update the reciprocal registration provision; and
- Introduce provisional registration.

For State Apprenticeship Agencies (SAAs), the regulations:[6]
- Increase linkages with the workforce investment system;
- Redefine the roles and responsibilities of SAAs and State Apprenticeship Councils;
- Establish a process for continued recognition; and
- Increase flexibility for location of an SAA.

For the U.S. Department of Labor, the regulations:[7]
- Enhance program accountability; and
- Ensure national conformity with federal apprenticeship legislation and regulations.

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[1] U.S. Department of Labor, *Workforce System Results* (Sep. 30, 2012), at 2, *available at* http://www.doleta.gov/Farmworker/pdf/workforceSystemResultsSept2012.pdf.
[2] U.S. Department of Labor, *History and Fitzgerald Act*, http://www.doleta.gov/oa/history.cfm (last visited January 14, 2016). *See* 29 U.S.C. s. 50 (1937), as amended.
[3] *Id.* Since 1937, RA programs have grown to 24,000 programs providing education and training to approximately 400,000 apprentices in emerging and high-growth sectors such as energy conservation, health care, and information technology, in addition to traditional industries such as manufacturing and construction. *Id.*
[4] *Id*. "These revised regulations published, on October 29, 2008, update Title 29 CFR, part 29 and provide a framework that supports an enhanced, modernized apprenticeship system." U.S. Department of Labor, *Regulations*, http://www.doleta.gov/oa/regulations.cfm (last visited January 14, 2016).
[5] U.S. Department of Labor, *Apprenticeship Final Rule Fact Sheet*, at 1-2, *available at* http://www.doleta.gov/oa/pdf/Apprenticeship_Final_Fact_Sheet.pdf.
[6] U.S. Department of Labor, *Apprenticeship Final Rule Fact Sheet*, at 2-3, *available at* http://www.doleta.gov/oa/pdf/Apprenticeship_Final_Fact_Sheet.pdf.
[7] U.S. Department of Labor, *Apprenticeship Final Rule Fact Sheet*, at 3, *available at* http://www.doleta.gov/oa/pdf/Apprenticeship_Final_Fact_Sheet.pdf.

Registered apprenticeship program sponsors (*i.e.*, employers, employer associations, and labor management organizations)[8] identify the minimum qualifications to apply to their apprenticeship programs.[9]

State Law Regarding Apprenticeship Programs

While the Federal government works in cooperation with states to oversee the nation's apprenticeship programs, the states have the authority to register apprenticeship programs through federally recognized SAAs.[10] In Florida, the Department of Education (DOE) serves as the registering entity to ensure compliance with federal and state apprenticeship standards, provide technical assistance, and conduct quality assurance assessments.[11]

Florida law provides education and training opportunities, in the form of apprenticeship and preapprenticeship programs, to prepare individuals for trades, occupations, and professions suited to their abilities.[12]

An apprenticeship program means "an organized course of instruction, registered and approved by the department, which course shall contain all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices[13] including such matters as the requirements for a written apprenticeship agreement."[14] A preapprenticeship program means "an organized course of instruction in the public school system or elsewhere, which course is designed to prepare a person 16 years of age or older to become an apprentice and which course

[8] Registered Apprenticeship program sponsors vary from small, privately owned businesses to national employer and industry associations. There are nearly 29,000 sponsors representing more than 250,000 employers, such as UPS, the United States Military Apprenticeship Program, Werner Enterprises, and CVS/pharmacy. U.S. Department of Labor, *Apprentices*, http://www.doleta.gov/oa/apprentices.cfm (last visited January 14, 2016).

[9] U.S. Department of Labor, *Apprentices*, http://www.doleta.gov/oa/apprentices.cfm (last visited January 14, 2016). An individual must be at least 16 years of age to be an apprentice. *Id.* In hazardous occupations, individuals must usually be 18 years of age. *Id.* Program sponsors may also identify additional minimum qualifications and credentials to apply (*e.g.*, education, ability to physically perform the essential functions of the occupation, and proof of age). *Id.* All applicants are required to meet the minimum qualifications. *Id.* Based on the selection method utilized by the sponsor, additional qualification standards, such as fair aptitude tests and interviews, school grades, and previous work experience may be identified. *Id.*

[10] 29 C.F.R. ss. 29.1 and 29.13 (2008).

[11] 29 C.F.R. s. 29.2 (2008).

[12] Section 446.011(1), F.S.

[13] An "apprentice" means "a person at least 16 years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of journeyman craftsmen, which training should be combined with properly coordinated studies of technical and supplementary subjects, and who has entered into a written agreement, which may be cited as an apprentice agreement, with a registered apprenticeship sponsor who may be either an employer, an association of employers, or a local joint apprenticeship committee." Section 446.021(2), F.S. A "journeyman means" "a person working in an apprenticeable occupation who has successfully completed a registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation." Section 446.021(4), F.S. An apprenticeable occupation is a skilled trade which possesses all of the characteristics that are specified in law (*e.g.*, customarily learned in a practical way through a structured, systemic program of on-the-job, supervised training and involves manual, mechanical, or technical skills and knowledge which require a minimum of 2,000 hours of work and training, which hours are excluded from the time spent at related instruction). Section 446.092, F.S.

[14] Section 446.021(6), F.S. An apprenticeship agreement may not operate to invalidate any apprenticeship provision in a collective agreement between employers and employees which establishes higher apprenticeship standards. Section 446.081(1), F.S.

is approved by and registered with the department and sponsored by a registered apprenticeship program."[15]

The DOE is responsible for administering, facilitating, and supervising registered apprenticeship programs, including, but not limited to:[16]

- Developing and encouraging apprenticeship programs.
- Cooperating with and assisting apprenticeship sponsors to develop apprenticeship standards and training requirements.
- Monitoring RA programs.
- Investigating complaints regarding failure to meet the standards[17] established by the DOE.
- Canceling registration of programs that fail to comply with DOE standards and policies.

Additionally, the DOE, district school boards, and Florida College System (FCS) institution district boards of trustees must work together with existing apprenticeship programs so that individuals completing preapprenticeship programs may be able to receive credit towards completing registered apprenticeship programs.[18]

The State Apprenticeship Advisory Council (Council) advises the DOE on matters related to apprenticeship.[19] The Council is comprised of 10 voting members appointed by the Governor and two ex officio nonvoting members.[20] The Commissioner of Education (Commissioner) or the Commissioner's designee must serve ex officio as chair of the Council, but may not vote.[21] Two public members who are knowledgeable about registered apprenticeship and apprenticeable occupations are appointed by the Governor to the Council.[22] One of the public members must be recommended by joint organizations and one must be recommended by nonjoint organizations.[23]

[15] Section 446.021(5), F.S.
[16] Section 446.041, F.S.
[17] The DOE is responsible for developing apprenticeship and preapprenticeship uniform minimum standards for the apprenticeable trades and assisting district school boards and community college district boards of trustees in developing preapprenticeship programs. Sections 446.011(2), 446.032, and 446.052, F.S.; Rule 6A-23.004, F.A.C. "Uniform minimum preapprenticeship standards" means "the minimum requirements established uniformly for each craft under which a preapprenticeship program is administered and includes standards for admission, training goals, training objectives, curriculum outlines, objective standards to measure successful completion of the preapprenticeship program, and the percentage of credit which may be given to preapprenticeship graduates upon acceptance into the apprenticeship program." Section 446.021(8), F.S.
[18] Section 446.052(3), F.S.
[19] Section 446.045(2)(a), F.S.
[20] *Id*.
[21] Section 446.045(2)(b), F.S.
[22] *Id.*
[23] *Id.* A "joint organization" means an apprenticeship sponsor who participates in a collective bargaining agreement. Section 446.045(1)(a), F.S. A "nonjoint organization" means an apprenticeship sponsor who does not participate in a collective bargaining agreement. *Id.* at (1)(b).

CAPE Digital Tool Certificates

The DOE annually identifies CAPE Digital Tool certificates[24] available to school districts to use in their programs for public elementary and middle school students to attain digital skills needed for academic work and future employment.[25] The skills may include, but are not limited to:[26]

- Word processing;
- Spreadsheets;
- Presentations;
- Digital arts;
- Cybersecurity; and
- Coding.

The certificates are identified on the CAPE Industry Certification Funding List[27] (list) and solely updated by the Chancellor of Career and Adult Education.[28] Currently, the list includes 15 CAPE Digital Tool certificates, the maximum number allowed.[29] In the 2014-2015 school year, 3,666 students earned a total of 3,953 CAPE Digital Tool certificates in 26 school districts.[30] A student who earns a CAPE Digital Tool certificate generates additional full-time equivalent student membership for purposes of school district funding under the Florida Education Finance Program.[31]

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[24] A certificate is earned through coursework with a specific focus and learning objectives, attainment of which demonstrates knowledge of course content. Certification results from an assessment process demonstrating mastery or competency of a set of standards. American Council for Accredited Certification, National Organization for Competency Assurance (NOCA) Standard 1100: "Certificate" vs. "Certification" *available at* http://www.acac.org/forms/otherpdfs/NOCA%20Article%203-09.pdf.

[25] Section 1003.4203(3), F.S.

[26] *Id.*

[27] All items on the list must include written exams that are third-party developed, scored by the certifying agency, and given in a proctored testing environment. Rule 6A-6.0573, F.A.C.

[28] *Id.* To earn an industry certification, a student is assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is nationally recognized and must be: (1) within an industry that addresses a critical local or statewide economic need; (2) linked to an occupation that is included in the workforce system's targeted occupation list; or (3) linked to an occupation that is identified as emerging. Section 1003.492(2), F.S. *See also*, Florida Department of Education, Industry Certification http://www.fldoe.org/academics/career-adult-edu/industry-certification (last visited January 19, 2016). The DOE must also identify other certificates, certifications, and courses on the CAPE Industry Certification Funding List (*e.g.*, CAPE ESE Digital Tool certificates, CAPE Innovation Courses, and CAPE Acceleration Industry Certifications). Section 1008.44(1), F.S.

[29] Section 1008.44(1)(b), F.S. Florida Department of Education, *2015-2016 CAPE Industry Certification Funding List*, at 6, *available at* http://www.fldoe.org/core/fileparse.php/8904/urlt/1516icfl.pdf. A more detailed list is *available at* http://www.fldoe.org/academics/career-adult-edu/cape-secondary/cape-industry-cert-funding-list-current.stml (last visited January 11, 2016).

[30] Florida Department of Education, Email, January 7, 2016.

[31] Section 1008.44(1)(b), F.S. Additional full-time equivalent (FTE) student membership is based on successful completion of a career-themed course, or courses with embedded CAPE industry certifications or CAPE Digital Tool certificates, and issuance of industry certification identified on the CAPE Industry Certification Funding List. Section 1011.62(1)(o), F.S. An additional 0.025 FTE shall be calculated for CAPE Digital Tool certificates earned by students in elementary and middle school grades. *Id.*

Career and Technical Education Programs

Florida law states that "[t]he purpose of career education is to enable students who complete career programs to attain and sustain employment and realize economic self-sufficiency."[32] Public school districts and FCS institutions are responsible for ensuring adherence to accountability standards for career education programs, including, but not limited to:[33]

- Student demonstration of the academic skills necessary to enter an occupation.
- Student preparation to enter an occupation in an entry-level position or continue postsecondary study.
- Student completion, placement, and retention rates.[34]

The DOE is responsible for, among other things, providing timely, accurate technical assistance to schools districts and FCS institutions and developing program standards and industry-driven benchmarks for career, adult, and community education programs.[35]

The president of each state university or FCS institution is responsible for establishing procedures for appeals to redress student grievances related to the award or administration of financial aid at the university or institution.[36] Although Florida law does not expressly require career and technical centers to establish such procedures, federal law does. As student financial aid granting institutions in accordance with Title IV of the Higher Education Act of 1965, career and technical centers must establish and maintain financial aid appeal procedures.[37]

III. Effect of Proposed Changes:

This bill updates terminology and expands opportunities and requirements related to career and adult education. Specifically, the bill:

- Updates, revises, and expands terminology and criteria to align statutory law to federal guidelines and regulations regarding apprenticeship programs.
- Increases the number of CAPE Digital Tool certificates that can be earned by elementary and middle school students and approved annually on the CAPE Industry Certification Funding List.
- Requires school district career centers and charter technical career centers to establish financial aid appeal procedures for students seeking redress of grievances.

[32] Section 1004.92(1), F.S.
[33] *Id.* at (2)(a).
[34] The DOE must develop a system of performance measures in order to evaluate the career education programs which measure program enrollment, completion rates, placement rates, and amount of earnings at the time of placement. Placement and employment information, where applicable, shall contain data relevant to job retention, including retention rates. The State Board of Education must adopt by rule the specific measures and any definitions needed to establish the system of performance measures. Section 1008.43(1)(a), F.S.; Rule 6A-10.0342, F.A.C.
[35] *Id.* at (2)(b).
[36] Section 1009.42(2), F.S.
[37] 20 U.S.C. s. 1018, *et seq.* (1965), as amended. According to DOE, career and technical centers currently have student financial aid appeal procedures in place. Florida Department of Education, via conference call, January 7, 2016.

Apprenticeships

Definitions

The bill changes the term "journeyman" to "journeyworker." Also, the bill clarifies and expands the definition of the term journeyworker as a worker who has mastered the skills and competencies required for a specific trade or occupation through a formal apprenticeship, attainment of a nationally recognized industry certification, or practical on-the-job experience or formal training. The revised definition aligns the state definition with federal law and recognizes the importance of industry certifications as nationally recognized credentials that demonstrate competency of the student's knowledge in a specific trade or occupation.

The bill redefines "related instruction" by specifying that such instruction may be given in occupational or industrial courses taught inside or outside the classroom through correspondence courses, electronic media, or other forms of self-study approved by the Department of Education (DOE). The bill expands the definition to broaden the types of courses and options for receiving instruction for such courses, which may benefit preapprentices and apprentices who would not otherwise have the opportunity to receive the instruction in a traditional classroom setting.

Apprenticeable Occupations

The bill expands the criteria for an apprenticeable occupation as a clearly identified, skilled trade which may be associated with a nationally recognized industry certification and involves skills and knowledge in accordance with the applicable industry standards. By revising the criteria for an apprenticeable occupation, the bill recognizes the importance of industry certifications as nationally recognized credentials that demonstrate competency of the student's knowledge in a specific trade or occupation.

State Apprenticeship Advisory Council Membership

The bill authorizes the Governor to appoint two public members to the State Apprenticeship Advisory Council (council) who are independent of, rather than recommended by, joint or nonjoint organizations affiliated with apprenticeship sponsors, which meets the intent of federal law. The bill may provide the Governor more autonomy when appointing council members.

Apprenticeship Agreements

The bill prohibits apprenticeship programs or agreements from discriminating against or invalidating special provisions for veterans, minority persons, or women. In effect, the bill ensures that such individuals are protected and special provisions are honored in apprenticeship agreements.

CAPE Digital Tool Certificates

The bill increases from 15 to 30 the maximum number of CAPE Digital Tool certificates available for school districts to use in their programs and provides students more options for acquiring digital skills and attaining industry-approved credentials. Also, the bill removes the requirement that the CAPE Digital Tool certificates be updated solely by the Chancellor of

Career and Adult Education which may provide the DOE with more flexibility to review, recommend, and update the CAPE Certification Funding List with regard to such certificates.

Career and Technical Center Financial Aid Appeals

The bill requires, consistent with federal law, each district school board operating a career center and each governing board of a charter technical career center to establish procedures for student appeals relating to financial aid grievances. In effect, the bill ensures that students enrolled in career and technical education programs are afforded the same rights relating to student financial aid as students enrolled in state universities and Florida College System institutions.

The bill provides an effective date of July 1, 2016.

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:

Under SB 1060, the increase in the number of CAPE Digital Tool certificates made available on the CAPE Industry Certification Funding List may result in an increase in the number of students eligible to generate additional full-time equivalent (FTE) funding to school districts.[38] Each CAPE Digital Tool certificate generates 0.025 FTE, which would generate approximately $104 in additional funding for each certificate earned in the 2015-2016 fiscal year.[39]

[38] Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 1060), at 5, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).
[39] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 446.021, 446.032, 446.045, 446.081, 446.091, 446.092, 1008.44, and 1009.42.

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.

678212

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 168 - 197
and insert:
Section 7. Subsection (3) of section 1003.4295, Florida Statutes, is amended to read:
1003.4295 Acceleration options.—
(3) The Credit Acceleration Program (CAP) is created for the purpose of allowing a student to earn high school credit in Algebra I, Algebra II, geometry, United States history, ~~or~~

678212

biology, or a course under s. 1003.4285 if the student passes the corresponding statewide, standardized assessment administered under s. 1008.22 or Advanced Placement Examination. Notwithstanding s. 1003.436, a school district shall award course credit to a student who is not enrolled in the course, or who has not completed the course, if the student attains a passing score on the corresponding statewide, standardized assessment or Advanced Placement Examination. The school district shall permit a student who is not enrolled in the course, or who has not completed the course, to take the assessment or examination during the regular administration of the assessment or examination.

Section 8. Subsection (2) of section 1004.015, Florida Statutes, is amended to read:

1004.015 Higher Education Coordinating Council.—

(2) Members of the council shall include:

(a) One member of the Board of Governors, appointed by the chair of the Board of Governors.

(b) The Chancellor of the State University System.

(c) The Chancellor of the Florida College System.

(d) The Chancellor of Career and Adult Education.

(e) ~~(d)~~ One member of the State Board of Education, appointed by the chair of the State Board of Education.

(f) ~~(e)~~ The Executive Director of the Florida Association of Postsecondary Schools and Colleges.

(g) ~~(f)~~ The president of the Independent Colleges and Universities of Florida.

(h) ~~(g)~~ The president of CareerSource Florida, Inc., or his or her designee.

678212

(i) ~~(h)~~ The president of Enterprise Florida, Inc., or a designated member of the Stakeholders Council appointed by the president.

(j) ~~(i)~~ Three representatives of the business community, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor, who are committed to developing and enhancing world class workforce infrastructure necessary for Florida's citizens to compete and prosper in the ever-changing economy of the 21st century.

Section 9. Paragraph (b) of subsection (2) of section 1004.92, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

1004.92 Purpose and responsibilities for career education.—

(2)

(b) Department of Education accountability for career education includes, but is not limited to:

1. The provision of timely, accurate technical assistance to school districts and Florida College System institutions.

2. The provision of timely, accurate information to the State Board of Education, the Legislature, and the public.

3. The development of policies, rules, and procedures that facilitate institutional attainment of the accountability standards and coordinate the efforts of all divisions within the department.

4. The development of program standards and industry-driven benchmarks for career, adult, and community education programs, which must be updated every 3 years. The standards must reflect the quality components of a career and technical education

678212

program and include career, academic, and workplace skills; viability of distance learning for instruction; and work/learn cycles that are responsive to business and industry.

5. Overseeing school district and Florida College System institution compliance with the provisions of this chapter.

6. Ensuring that the educational outcomes for the technical component of career programs are uniform and designed to provide a graduate who is capable of entering the workforce on an equally competitive basis regardless of the institution of choice.

(4) The State Board of Education shall adopt rules to administer this section.

Section 10. Section 1004.93, Florida Statutes, is reordered and amended to read:

1004.93 Adult general education.—

(1)(a) The intent of this section is to encourage the provision of educational services that will enable adults to acquire:

1. The basic skills necessary to attain basic and functional literacy.

2. A high school diploma or successfully complete the high school equivalency examination.

3. An educational foundation that will enable them to become more employable, productive, and self-sufficient citizens.

(b) It is further intended that educational opportunities be available for adults who have earned a diploma or high school equivalency diploma but who lack the basic skills necessary to function effectively in everyday situations, to enter the job

678212

market, or to enter career certificate instruction.

(2) The adult education program must provide academic services to ~~students in the following priority~~:

(a) Students who ~~demonstrate skills at less than a fifth grade level, as measured by tests approved for this purpose by the State Board of Education, and who~~ are studying to achieve basic literacy.

(b) Students who ~~demonstrate skills at the fifth grade level or higher, but below the ninth grade level, as measured by tests approved for this purpose by the State Board of Education, and who~~ are studying to achieve functional literacy.

(c) Students who are earning credit required for a high school diploma or ~~who are~~ preparing for the high school equivalency examination. By July 1, 2017, each school district or Florida College System institution with an adult high school or offering a high school equivalency examination preparation program must offer at least one online program option that enables students to earn a high school diploma or its equivalent.

(d) Students who have earned high school diplomas and require specific improvement in order to:

1. Obtain or maintain employment or benefit from certificate career education programs;

2. Pursue a postsecondary degree; or

3. Develop competence in the English language to qualify for employment.

(3) If all students meeting the criteria of subsection (2) are provided academic services, the adult education program may provide academic services to:


678212

(a) ~~(c)~~ Students who enroll in lifelong learning courses or activities that seek to address community social and economic issues that consist of health and human relations, government, parenting, consumer economics, and senior citizens.

(b) ~~(f)~~ Students who enroll in courses that relate to the recreational or leisure pursuits of the students. The cost of courses conducted pursuant to this paragraph shall be borne by the enrollees.

(4) ~~(3)~~ (a) Each district school board or Florida College System institution board of trustees shall negotiate with the regional workforce board for basic and functional literacy skills assessments for participants in the welfare transition employment and training programs. Such assessments shall be conducted at a site mutually acceptable to the district school board or Florida College System institution board of trustees and the regional workforce board.

(b) State employees who are employed in local or regional offices of state agencies shall inform clients of the availability of adult basic and secondary programs in the region. The identities of clients who do not possess high school diplomas or who demonstrate skills below the level of functional literacy shall be conveyed, with their consent, to the local school district or Florida College System institution, or both.

(c) To the extent funds are available, the Department of Children and Families shall provide for day care and transportation services to clients who enroll in adult basic education programs.

(5) ~~(4)~~ (a) Adult general education shall be evaluated and funded as provided in s. 1011.80.


678212

(b) Fees for adult basic instruction are to be charged in accordance with chapter 1009.

~~(c) The State Board of Education shall define, by rule, the levels and courses of instruction to be funded through the developmental education program. The state board shall coordinate the establishment of costs for developmental education courses, the establishment of statewide standards that define required levels of competence, acceptable rates of student progress, and the maximum amount of time to be allowed for completion of developmental education. Developmental education is part of an associate in arts degree program and may not be funded as an adult career education program.~~

~~(d) Expenditures for developmental education and lifelong learning students shall be reported separately. Allocations for developmental education shall be based on proportional full-time equivalent enrollment. Program review results shall be included in the determination of subsequent allocations. A student shall be funded to enroll in the same developmental education class within a skill area only twice, after which time the student shall pay 100 percent of the full cost of instruction to support the continuous enrollment of that student in the same class; however, students who withdraw or fail a class due to extenuating circumstances may be granted an exception only once for each class, provided approval is granted according to policy established by the board of trustees. Each Florida College System institution shall have the authority to review and reduce payment for increased fees due to continued enrollment in a developmental education class on an individual basis contingent upon the student's financial hardship, pursuant to definitions~~


678212

~~and fee levels established by the State Board of Education. Developmental education and lifelong learning courses do not generate credit toward an associate or baccalaureate degree.~~

(c) ~~(e)~~ A district school board or a Florida College System institution board of trustees may negotiate a contract with the regional workforce board for specialized services for participants in the welfare transition program, beyond what is routinely provided for the general public, to be funded by the regional workforce board.

(6) ~~(5)~~ If students who have been determined to be adults with disabilities are enrolled in workforce development programs, the funding formula must provide additional incentives for their achievement of performance outputs and outcomes.

(7) ~~(6)~~ The commissioner shall recommend the level of funding for public school and Florida College System institution adult education within the legislative budget request and make other recommendations and reports considered necessary or required by rules of the State Board of Education.

(8) ~~(7)~~ Buildings, land, equipment, and other property owned by a district school board or Florida College System institution board of trustees may be used for the conduct of the adult education program. Buildings, land, equipment, and other property owned or leased by cooperating public or private agencies, organizations, or institutions may also be used for the purposes of this section.

(9) ~~(8)~~ In order to accelerate the employment of adult education students, students entering adult general education programs after July 1, 2013, must complete the following action-steps-to-employment activities before the completion of the


678212

first term:

(a) Identify employment opportunities using market-driven tools.

(b) Create a personalized employment goal.

(c) Conduct a personalized skill and knowledge inventory.

(d) Compare the results of the personalized skill and knowledge inventory with the knowledge and skills needed to attain the personalized employment goal.

(e) Upgrade skills and knowledge needed through adult general education programs and additional educational pursuits based on the personalized employment goal.

The action-steps-to-employment activities may be developed through a blended approach with assistance provided to adult general education students by teachers, employment specialists, guidance counselors, business and industry representatives, and online resources. Students may be directed to online resources and provided information on financial literacy, student financial aid, industry certifications, and occupational services and a listing of job openings.

(10) ~~(9)~~ The State Board of Education may adopt rules necessary for the implementation of this section.

Section 11. Section 1007.273, Florida Statutes, is amended to read:

1007.273 Structured high school acceleration programs ~~Collegiate high school program~~.—

~~(1)~~ Each Florida College System institution shall work with each district school board in its designated service area to establish one or more structured high school acceleration


678212

programs, including, but not limited to, collegiate high school programs.

(1) ~~(2)~~ PURPOSE.—At a minimum, structured ~~collegiate~~ high school acceleration programs must include an option for public school students in grade 11 or grade 12 participating in the program, for at least 1 full school year, to earn CAPE industry certifications pursuant to s. 1008.44 and to successfully complete 30 credit hours toward general education core curriculum or common prerequisite course requirements pursuant to s. 1007.25 through the dual enrollment program under s. 1007.271, a mechanism pursuant to s. 1007.27, or a CAPE industry certification pursuant to s. 1008.44 toward the first year of college for an associate degree or baccalaureate degree while enrolled in the program. A district school board may not limit the number of public school students who may enroll in such programs.

(2) ~~(3)~~ REQUIRED PROGRAM CONTRACTS.—Each district school board and its local Florida College System institution shall execute a contract to establish one or more structured ~~collegiate~~ high school acceleration programs at a mutually agreed upon location or locations. ~~Beginning with the 2015-2016 school year,~~ If the institution does not establish a program with a district school board in its designated service area, another Florida College System institution may execute a contract with that district school board to establish the program. Beginning with the 2016-2017 school year, the contract must be executed by January 1 of each school year for implementation of the program during the next school year. The contract must:


678212

(a) Identify the grade levels to be included in the ~~collegiate high school~~ program ~~which must, at a minimum, include grade 12~~.

(b) Describe the ~~collegiate high school~~ program, including the delineation of courses that must, at a minimum, include general education core curriculum or common prerequisite course requirements pursuant to s. 1007.25 and industry certifications offered, including online course availability; the high school and college credits earned for each postsecondary course completed and industry certification earned; student eligibility criteria; and the enrollment process and relevant deadlines.

(c) Describe the methods, medium, and process by which students and their parents are annually informed about the availability of the ~~collegiate high school~~ program, the return on investment associated with participation in the program, and the information described in paragraphs (a) and (b).

(d) Identify the delivery methods for instruction and the instructors for all courses.

(e) Identify student advising services and progress monitoring mechanisms.

(f) Establish a program review and reporting mechanism regarding student performance outcomes.

(g) Describe the terms of funding arrangements to implement the ~~collegiate high school~~ program pursuant to paragraph (5)(a).

(3) STUDENT PERFORMANCE CONTRACT AND NOTIFICATION.—

(a) ~~(4)~~ Each student participating in a structured ~~collegiate~~ high school acceleration program must enter into a student performance contract which must be signed by the student, the parent, and a representative of the school district


678212

and the applicable Florida College System institution, state university, or other institution participating pursuant to subsection (4) ~~(5)~~. The performance contract must, at a minimum, specify ~~include~~ the schedule of courses, by semester, and industry certifications to be taken by the student, student attendance requirements, ~~and~~ course grade requirements, and the applicability of such courses to an associate degree or a baccalaureate degree.

(b) By September 1 of each school year, each district school board must notify each student enrolled in grades 9, 10, 11, and 12 in a public school within the school district about the structured high school acceleration program including, but not limited to:

1. The method for earning college credit through participation in the program. Such methods must include an Internet website link to the dual enrollment course equivalency list approved by the Department of Education and the credit-by-examination equivalency list adopted by the State Board of Education in rule.

2. The estimated cost savings to students and their families resulting from students successfully completing 30 credit hours toward general education core or common prerequisite course requirements and earning industry certifications before graduating from high school versus the cost of earning such credit hours and industry certifications after graduating from high school.

(4) ~~(5)~~ AUTHORIZED PROGRAM CONTRACTS.—In addition to executing a contract with the local Florida College System institution under this section, a district school board may


678212

execute a contract to establish a structured ~~collegiate~~ high school acceleration program with a state university or an institution that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program, that is a nonprofit independent college or university located and chartered in this state, and that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees. Such university or institution must meet the requirements specified under subsections (2) ~~(3)~~ and (3) ~~(4)~~. A charter school may execute a contract directly with the local Florida College System institution or another institution as authorized under this section to establish a structured high school acceleration program at a mutually agreed upon location.

(5) FUNDING.—

(a)~~(6)~~ The structured ~~collegiate~~ high school acceleration program shall be funded pursuant to ss. 1007.271 and 1011.62. The State Board of Education shall enforce compliance with this section by withholding the transfer of funds for the school districts and the Florida College System institutions in accordance with s. 1008.32.

(b) A student who enrolls in the structured high school acceleration program and successfully completes 30 credit hours toward fulfilling general education core curriculum or common prerequisite course requirements pursuant to s. 1007.25, which may include attaining one or more industry certifications, generates a 0.5 full-time equivalent (FTE) bonus. A student who enrolls in the structured high school acceleration program and successfully completes 60 credit hours toward fulfilling the


678212

requirements for an associate in arts or an associate in science degree pursuant to the student performance contract under subsection (3), which may include attaining one or more industry certifications, before graduating from high school, generates an additional 0.5 FTE bonus. Each district school board that is a contractual partner with a Florida College System institution shall report to the commissioner the total FTE bonus for each structured high school acceleration program for the students from that district school board. The total FTE bonus shall be added to each school district's total weighted FTE for funding in the subsequent fiscal year.

(6) REPORTING REQUIREMENTS.—

(a) By September 1 of each school year, each district school superintendent must report to the commissioner, at a minimum, the following information for the prior school year:

1. Number of students in public schools within the school district who enrolled in the structured high school acceleration program, and the partnering postsecondary institutions pursuant to subsections (2) and (4).

2. Average number of courses completed and the number of industry certifications attained by the students who enrolled in the structured high school acceleration program.

3. Projected student enrollment in the structured high school acceleration program within the next school year.

4. Barriers to executing contracts to establish one of more structured high school acceleration programs.

(b) By November 30 of each school year, the commissioner must report to the Governor, President of the Senate, and Speaker of the House of Representatives the status of structured


678212

high school acceleration programs including, at a minimum, a summary of student enrollment and completion information pursuant to this subsection; barriers, if any, to establishing such programs; and recommendations for expanding access to such programs statewide.

Section 12. Paragraph (b) of subsection (1) of section 1008.44, Florida Statutes, is amended to read:

1008.44 CAPE Industry Certification Funding List and CAPE Postsecondary Industry Certification Funding List.—

(1) Pursuant to ss. 1003.4203 and 1003.492, the Department of Education shall, at least annually, identify, under rules adopted by the State Board of Education, and the Commissioner of Education may at any time recommend adding the following certificates, certifications, and courses:

(b) No more than 30 ~~15~~ CAPE Digital Tool certificates limited to the areas of word processing; spreadsheets; sound, motion, and color presentations; digital arts; cybersecurity; and coding pursuant to s. 1003.4203(3) that do not articulate for college credit. Such certificates shall be annually identified on the CAPE Industry Certification Funding List ~~and updated solely by the Chancellor of Career and Adult Education~~. The certificates shall be made available to students in elementary school and middle school grades and, if earned by a student, shall be eligible for additional full-time equivalent membership pursuant to s. 1011.62(1)(o)1.

Section 13. Subsection (2) of section 1009.42, Florida Statutes, is amended to read:

1009.42 Financial aid appeal process.—

(2) The president of each state university and each Florida

College System institution, each district school board that operates a career center pursuant to s. 1001.44, and each charter technical career center that operates pursuant to s. 1002.34 shall establish a procedure for appeal, by students, of grievances related to the award or administration of financial aid at the institution.

Section 14. Section 1011.80, Florida Statutes, is reordered and amended to read:

1011.80 Funds for operation of workforce education programs.—

(1) As used in this section, the terms "workforce education" and "workforce education program" include:

(a) Adult general education programs designed to improve the employability skills of the state's workforce as defined in s. 1004.02(3).

(b) Career certificate programs, as defined in s. 1004.02(20).

(c) Applied technology diploma programs.

(d) Continuing workforce education courses.

(e) Degree career education programs.

(f) Apprenticeship and preapprenticeship programs as defined in s. 446.021.

(2) A ~~Any~~ workforce education program may be conducted by a Florida College System institution or a school district, except that ~~college credit in~~ an associate in applied science or an associate in science degree may be awarded only by a Florida College System institution. However, if an associate in applied science or an associate in science degree program contains within it an occupational completion point that confers a

678212

certificate or an applied technology diploma, that portion of the program may be offered ~~conducted~~ by a school district career center. ~~Any~~ Instruction designed to articulate to a degree program is subject to guidelines and standards adopted by the State Board of Education pursuant to s. 1007.25.

(3) Each school district and Florida College System institution receiving state appropriations for workforce education programs must maintain adequate and accurate records, including a system to record school district workforce education funding and expenditures, in order to maintain separation of postsecondary workforce education expenditures from secondary workforce education expenditures. These records must be filed with the Department of Education in correct and proper form on or before the date due as provided by law or rule for each annual or periodic report that is required by rules of the State Board of Education.

(4) ~~(9)~~ School districts shall report full-time equivalent students by discipline category for the programs specified in subsection (1). There shall be an annual cost analysis for the school district workforce education programs that reports cost by discipline category consistent with the reporting for full-time equivalent students. The annual financial reports submitted by the school districts must accurately report on the student fee revenues by fee type according to the programs specified in subsection (1). The Department of Education shall develop a plan for comparable reporting of program, student, facility, personnel, and financial data between the Florida College System institutions and the school district workforce education programs.


678212

~~(3) If a program for disabled adults pursuant to s. 1004.93 is a workforce program as defined in law, it must be funded as provided in this section.~~

~~(4) Funding for all workforce education programs must be based on cost categories, performance output measures, and performance outcome measures.~~

~~(a) The cost categories must be calculated to identify high-cost programs, medium-cost programs, and low-cost programs. The cost analysis used to calculate and assign a program of study to a cost category must include at least both direct and indirect instructional costs, consumable supplies, equipment, and standard program length.~~

~~(b) The performance output measure for an adult general education course of study is measurable improvement in student skills. This measure shall include improvement in literacy skills, grade level improvement as measured by an approved test, or attainment of a State of Florida diploma or an adult high school diploma.~~

~~(c) The performance outcome measures for adult general education programs are associated with placement and retention of students after reaching a completion point or completing a program of study. These measures include placement or retention in employment. Continuing postsecondary education at a level that will further enhance employment is a performance outcome for adult general education programs.~~

(5) State funding and student fees for workforce education instruction shall be established as follows:

(a) Expenditures for the continuing workforce education programs provided by the Florida College System institutions or


678212

school districts must be fully supported by fees. Enrollments in continuing workforce education courses shall not be counted for purposes of funding full-time equivalent enrollment.

(b) For all other workforce education programs, state funding shall be calculated based on weighted enrollment and program costs minus fee revenues generated to offset program operational costs ~~equal 75 percent of the average cost of instruction with the remaining 25 percent made up from student fees~~. Fees for courses within a program shall not vary according to the cost of the individual program, but instead shall be as provided in s. 1009.22 ~~based on a uniform fee calculated and set at the state level, as adopted by the State Board of Education~~, unless otherwise specified in the General Appropriations Act.

~~(c) For fee-exempt students pursuant to s. 1009.25, unless otherwise provided for in law, state funding shall equal 100 percent of the average cost of instruction.~~

(c) ~~(d)~~ For a public educational institution that has been fully funded by an external agency for direct instructional costs of any course or program, the FTE generated shall not be reported for state funding.

(6)(a) ~~A school district or a Florida College System institution that provides workforce education programs shall receive funds in accordance with distributions for base and performance funding established by the Legislature in the General Appropriations Act.~~ To ensure equitable funding for all school district workforce education programs and to recognize enrollment growth, the Department of Education shall use the funding model developed by the District Workforce Education Funding Steering Committee to determine each district's


678212

workforce education funding needs. To assist the Legislature in allocating workforce education funds in the General Appropriations Act, the funding model shall annually be provided to the legislative appropriations committees no later than March 1.

(b) Operational funding shall be provided to school districts for workforce education programs based on weighted student enrollment and program costs determined by cost categories. The cost categories must be calculated to identify high-cost programs, medium-cost programs, and low-cost programs. The cost analysis used to calculate and assign a program of study to a cost category must include, at a minimum, direct and indirect instructional costs, consumable supplies, equipment, and standard program length.

(7) Performance funding for workforce education programs shall be contingent upon specific appropriation in the General Appropriations Act. To assist the Legislature in determining performance funding allocations, the State Board of Education shall annually, by March 1, provide the Legislature with recommended formulas, criteria, timeframes, and mechanisms for distributing performance funds. These recommendations shall reward programs that:

(a) Prepare people to enter high-skill and high-wage occupations identified by the Workforce Estimating Conference pursuant to s. 216.136 and programs approved by CareerSource Florida, Inc. At a minimum, performance incentives shall be calculated for adults who reach completion points or complete programs that lead to their placement in high-skill and high-wage employment.


678212

(b) Prepare adults who are eligible for public assistance, economically disadvantaged, disabled, not proficient in English, or dislocated workers for high-wage occupations. At a minimum, performance incentives shall be calculated at an enhanced value for such adults who complete programs that lead to their placement in high-wage employment. In addition, adjustments may be made in performance incentives for such adults who become employed in high-wage occupations in areas with high unemployment rates.

(c) Increase student achievement in adult general education courses by measuring performance output and outcome measures.

1. The performance output measure for an adult general education course is measurable improvement in student skills. This measure includes improvement in literacy skills, grade-level improvement as measured by an approved test, or attainment of a high school diploma.

2. The performance outcome measures for adult general education programs are placement in and retention of employment after reaching a completion point or completing a program. These measures include continuation of postsecondary education at a level that will further enhance employment.

(d) ~~(b)~~ Award industry certifications. Performance funding for industry certifications ~~for school district workforce education programs is contingent upon specific appropriation in the General Appropriations Act and~~ shall be determined as follows:

1. Occupational areas for which industry certifications may be earned, as established in the General Appropriations Act, are eligible for performance funding. Priority shall be given to the


678212

occupational areas emphasized in state, national, or corporate grants provided to Florida educational institutions.

2. The Chancellor of Career and Adult Education shall identify the industry certifications eligible for funding on the CAPE Postsecondary Industry Certification Funding List approved by the State Board of Education pursuant to s. 1008.44, based on the occupational areas specified in the General Appropriations Act.

3. Each school district shall be provided $1,000 for each industry certification earned by a workforce education student. The maximum amount of funding appropriated for performance funding pursuant to this paragraph shall be limited to $15 million annually. If funds are insufficient to fully fund the calculated total award, such funds shall be prorated.

~~(c) A program is established to assist school districts and Florida College System institutions in responding to the needs of new and expanding businesses and thereby strengthening the state's workforce and economy. The program may be funded in the General Appropriations Act. The district or Florida College System institution shall use the program to provide customized training for businesses which satisfies the requirements of s. 288.047. Business firms whose employees receive the customized training must provide 50 percent of the cost of the training. Balances remaining in the program at the end of the fiscal year shall not revert to the general fund, but shall be carried over for 1 additional year and used for the purpose of serving incumbent worker training needs of area businesses with fewer than 100 employees. Priority shall be given to businesses that must increase or upgrade their use of technology to remain~~

678212

~~competitive.~~

(8)~~(7)~~(a) A school district or Florida College System institution that receives workforce education funds must use the money to benefit the workforce education programs it provides. The money may be used for equipment upgrades, program expansions, or any other use that would result in workforce education program improvement. The district school board or Florida College System institution board of trustees may not withhold any portion of the performance funding for indirect costs.

(b) State funds provided for the operation of postsecondary workforce programs may not be expended for the education of state or federal inmates.

~~(8) The State Board of Education and CareerSource Florida, Inc., shall provide the Legislature with recommended formulas, criteria, timeframes, and mechanisms for distributing performance funds. The commissioner shall consolidate the recommendations and develop a consensus proposal for funding. The Legislature shall adopt a formula and distribute the performance funds to the State Board of Education for Florida College System institutions and school districts through the General Appropriations Act. These recommendations shall be based on formulas that would discourage low-performing or low-demand programs and encourage through performance-funding awards:~~

~~(a) Programs that prepare people to enter high-wage occupations identified by the Workforce Estimating Conference created by s. 216.136 and other programs as approved by CareerSource Florida, Inc. At a minimum, performance incentives shall be calculated for adults who reach completion points or~~


678212

~~complete programs that lead to specified high-wage employment and to their placement in that employment.~~

~~(b) Programs that successfully prepare adults who are eligible for public assistance, economically disadvantaged, disabled, not proficient in English, or dislocated workers for high-wage occupations. At a minimum, performance incentives shall be calculated at an enhanced value for the completion of adults identified in this paragraph and job placement of such adults upon completion. In addition, adjustments may be made in payments for job placements for areas of high unemployment.~~

~~(c) Programs that are specifically designed to be consistent with the workforce needs of private enterprise and regional economic development strategies, as defined in guidelines set by CareerSource Florida, Inc. CareerSource Florida, Inc., shall develop guidelines to identify such needs and strategies based on localized research of private employers and economic development practitioners.~~

~~(d) Programs identified by CareerSource Florida, Inc., as increasing the effectiveness and cost efficiency of education.~~

(9) ~~(10)~~ A high school student dually enrolled under s. 1007.271 in a workforce education program operated by a Florida College System institution or school district career center generates the amount calculated for workforce education funding, including any payment of performance funding, and the proportional share of full-time equivalent enrollment generated through the Florida Education Finance Program for the student's enrollment in a high school. If a high school student is dually enrolled in a Florida College System institution program, including a program conducted at a high school, the Florida

College System institution earns the funds generated for workforce education funding, and the school district earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a career center operated by the same district as the district in which the student attends high school, that district earns the funds generated for workforce education funding and also earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a workforce education program provided by a career center operated by a different school district, the funds must be divided between the two school districts proportionally from the two funding sources. A student may not be reported for funding in a dual enrollment workforce education program unless the student has completed the basic skills assessment pursuant to s. 1004.91. A student who is coenrolled in a K-12 education program and an adult education program may be reported for purposes of funding in an adult education program. If a student is coenrolled in core curricula courses for credit recovery or dropout prevention purposes and does not have a pattern of excessive absenteeism or habitual truancy or a history of disruptive behavior in school, the student may be reported for funding for up to two courses per year. Such a student is exempt from the payment of the block tuition for adult general education programs provided in s. 1009.22(3)(c). The Department of Education shall develop a list of courses to be designated as core curricula courses for the purposes of coenrollment.

(10) ~~(11)~~ The State Board of Education may adopt rules to

678212

administer this section.

Section 15. Section 1011.802, Florida Statutes, is created to read:

1011.802 Florida Apprenticeship Grant (FLAG) program.—

(1) The Florida Apprenticeship Grant (FLAG) program is created to provide grants to career centers, charter technical career centers, and Florida College System institutions on a competitive basis, in an amount provided in the General Appropriations Act, to establish new apprenticeship programs and expand existing apprenticeship programs. The Division of Career and Adult Education within the department shall administer the grant program.

(2) Applications from career centers, charter technical career centers, and Florida College System institutions must contain projected enrollment and projected costs for the new or expanded apprenticeship program.

(3) The department shall give priority to apprenticeship programs in the areas of information technology, health, and machining and manufacturing. Grant funds may be used for instructional equipment, supplies, personnel, student services, and other expenses associated with the creation or expansion of an apprenticeship program. Grant funds may not be used for recurring instructional costs or for a center’s or an institution’s indirect costs. Grant recipients must submit quarterly reports in a format prescribed by the department.

Section 16. Section 1011.803, Florida Statutes, is created to read:

1011.803 Rapid Response Grant program.—

(1) The Rapid Response Grant program is established to

678212

award grants on a competitive basis, in an amount provided in the General Appropriations Act, for the expansion or implementation of high-demand postsecondary programs at career centers and Florida College System institutions.

(2) Each career center or Florida College System institution applying for a grant shall submit an application to the Department of Education in the format prescribed by the department. The application must include, but need not be limited to, program expansion or development details, projected enrollment, and projected costs.

(3) Each career center or Florida College System institution that is awarded a grant under this section shall submit quarterly reports to the department in the format prescribed by the department. Grant funds may not be used to supplant current funds and must be used to expand enrollment in existing postsecondary programs or develop new postsecondary programs.

(4) The department shall administer the program and conduct an annual analysis and assessment of the effectiveness of the postsecondary programs funded under this section in meeting labor market demand.

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

And the title is amended as follows:

Delete lines 2 - 21

and insert:

An act relating to education; amending s. 446.021, F.S.; redefining and reordering terms; conforming provisions to changes made by the act; amending s.


678212

446.032, F.S.; conforming provisions to changes made by the act; amending s. 446.045, F.S.; revising the membership requirements for the State Apprenticeship Advisory Council; amending s. 446.081, F.S.; providing for construction; amending s. 446.091, F.S.; conforming provisions to changes made by the act; amending s. 446.092, F.S.; revising the attributes that characterize apprenticeable occupations; amending s. 1003.4295, F.S.; revising the purpose of the Credit Acceleration Program; requiring students to earn passing scores on specified assessments or examinations to earn course credit; amending s. 1004.015, F.S.; revising the membership of the Higher Education Coordinating Council; amending s. 1004.92, F.S.; revising the Department of Education's responsibility for the development of program standards for career, adult, and community education programs; providing for rulemaking; amending s. 1004.93, F.S.; revising provisions relating to adult general education; providing that adult education programs may only provide academic services to specified students under certain circumstances; deleting duties of the State Board of Education relating to adult general education programs; deleting a requirement that specific expenditures be reported separately; revising allocation requirements for developmental education; amending s. 1007.273, F.S.; providing additional options for students participating in a structured high school acceleration

678212

program; prohibiting a district school board from limiting the number of public school students who may enroll in a structured high school acceleration program; revising requirements relating to contracts establishing structured high school acceleration programs; requiring each district school board to notify students in certain grades about the program; revising provisions relating to program funding; providing reporting requirements; amending s. 1008.44, F.S.; increasing the maximum number of certain CAPE Digital Tool certificates that the Commissioner of Education may recommend be added to the CAPE Industry Certification Funding List; deleting the requirement that certain digital tool certificates be updated solely by the Chancellor of Career and Adult Education; amending s. 1009.42, F.S.; expanding the financial aid appeals process to other school entities; amending s. 1011.80, F.S.; conforming provisions; requiring school districts and Florida College System institutions to maintain certain records; revising operational and performance funding calculation and allocation for workforce education programs; deleting provisions relating to a program to assist in responding to the needs of new and expanding businesses and a requirement that the State Board of Education and CareerSource Florida, Inc., provide the Legislature with certain formulas and mechanisms for distributing performance funds; creating s. 1011.802, F.S.; creating the Florida Apprenticeship Grant (FLAG)


678212

program; providing for the purpose, requirements, and administration of the program; requiring certain career centers and Florida College System institutions to provide quarterly reports; creating s. 1011.803, F.S.; creating the Rapid Response Grant program; providing for the purpose, requirements, and administration of the program; requiring certain career centers and Florida College System institutions to provide quarterly reports; requiring the department to administer the program and conduct an annual program analysis; providing an

By Senator Legg

17-00639B-16 20161060__

A bill to be entitled

An act relating to career and adult education; amending s. 446.021, F.S.; redefining and reordering terms; conforming provisions to changes made by the act; amending s. 446.032, F.S.; conforming provisions to changes made by the act; amending s. 446.045, F.S.; revising the membership requirements for the State Apprenticeship Advisory Council; amending s. 446.081, F.S.; providing for construction; amending s. 446.091, F.S.; conforming provisions to changes made by the act; amending s. 446.092, F.S.; revising the attributes that characterize apprenticeable occupations; amending s. 1008.44, F.S.; increasing the maximum number of certain CAPE Digital Tool certificates that the Commissioner of Education may recommend be added to the CAPE Industry Certification Funding List; deleting the requirement that certain digital tool certificates be updated solely by the Chancellor of Career and Adult Education; amending s. 1009.42, F.S.; expanding the financial aid appeals process to other school entities; providing an effective date.

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

Section 1. Present subsections (2), (4), (5), (6), and (9) of section 446.021, Florida Statutes, are amended, and present subsections (1), (3), (8), (10), (11), and (12) of that section are redesignated as subsections (8), (11), (12), (3), (6), and (4), respectively, to read:

446.021 Definitions of terms used in ss. 446.011-446.092.—As used in ss. 446.011-446.092, the term:

17-00639B-16 20161060__

(1) ~~(2)~~ "Apprentice" means a person at least 16 years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of a journeyworker ~~journeymen craftsmen~~, which training should be combined with properly coordinated studies of related technical and supplementary subjects, and who has entered into a written agreement, which may be cited as an apprentice agreement, with a registered apprenticeship sponsor who may be ~~either~~ an employer, an association of employers, or a local joint apprenticeship committee.

(5) ~~(4)~~ "Journeyworker ~~Journeyman~~" means a worker recognized within an industry as having mastered the skills and competencies required for a specific trade or occupation. The term includes a mentor, technician, or specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation through formal apprenticeship, attainment of a nationally recognized industry certification, or practical on-the-job experience and formal training ~~person working in an apprenticeable occupation who has successfully completed a registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation~~.

(9) ~~(5)~~ "Preapprenticeship program" means an organized course of instruction, including, but not limited to, industry certifications identified under s. 1008.44, in the public school system or elsewhere, which course is designed to prepare a person 16 years of age or older to become an apprentice and which course is approved by and registered with the department and sponsored by a registered apprenticeship program.

(2)~~(6)~~ "Apprenticeship program" means an organized course of instruction, including, but not limited to, CAPE industry certifications identified under s. 1008.44, registered and approved by the department, which course shall contain all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices including such matters as the requirements for a written apprenticeship agreement.

(10)~~(9)~~ "Related instruction" means an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to a specific trade or occupation. Such instruction may be given in a classroom through occupational or industrial courses or outside of a classroom through correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the department.

Section 2. Subsection (1) of section 446.032, Florida Statutes, is amended to read:

446.032 General duties of the department for apprenticeship training.—The department shall:

(1) Establish uniform minimum standards and policies governing apprentice programs and agreements. The standards and policies shall govern the terms and conditions of the apprentice's employment and training, including the quality training of the apprentice for, but not limited to, such matters as ratios of apprentices to journeyworkers ~~journeymen~~, safety, related instruction, and on-the-job training; but these standards and policies may not include rules, standards, or guidelines that require the use of apprentices and job trainees on state, county, or municipal contracts. The department may

adopt rules necessary to administer the standards and policies.

Section 3. Paragraph (b) of subsection (2) of section 446.045, Florida Statutes, is amended to read:

446.045 State Apprenticeship Advisory Council.—

(2)

(b) The Commissioner of Education or the commissioner's designee shall serve ex officio as chair of the State Apprenticeship Advisory Council, but may not vote. The state director of the Office of Apprenticeship of the United States Department of Labor shall serve ex officio as a nonvoting member of the council. The Governor shall appoint to the council four members representing employee organizations and four members representing employer organizations. Each of these eight members shall represent industries that have registered apprenticeship programs. The Governor shall also appoint two public members who are knowledgeable about registered apprenticeship and apprenticeable occupations and who are independent of any joint or nonjoint organization~~, one of whom shall be recommended by joint organizations, and one of whom shall be recommended by nonjoint organizations~~. Members shall be appointed for 4-year staggered terms. A vacancy shall be filled for the remainder of the unexpired term.

Section 4. Subsection (4) is added to section 446.081, Florida Statutes, to read:

446.081 Limitation.—

(4) Nothing in ss. 446.011-446.092, in any rules adopted under those sections, or in any apprentice agreement approved under those sections shall operate to invalidate any special provision for veterans, minority persons, or women relating to

the standards, apprentice qualifications, or operation of the program which is not otherwise prohibited by law, executive order, or authorized regulation.

Section 5. Section 446.091, Florida Statutes, is amended to read:

446.091 On-the-job training program.—All provisions of ss. 446.011-446.092 relating to apprenticeship and preapprenticeship, including, but not limited to, programs, agreements, standards, administration, procedures, definitions, expenditures, local committees, powers and duties, limitations, grievances, and ratios of apprentices and job trainees to journeyworkers ~~journeymen~~ on state, county, and municipal contracts, shall be appropriately adapted and made applicable to a program of on-the-job training authorized under those provisions for persons other than apprentices.

Section 6. Section 446.092, Florida Statutes, is amended to read:

446.092 Criteria for apprenticeship occupations.—An apprenticeable occupation is a skilled trade that ~~which~~ possesses all of the following characteristics:

(1) It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.

(2) It is clearly identified and commonly recognized throughout an ~~the~~ industry and may be associated with a nationally recognized industry certification ~~or recognized with a positive view towards changing technology~~.

(3) It involves manual, mechanical, or technical skills and knowledge that, in accordance with the industry standards for

that occupation, requires ~~which require~~ a minimum of 2,000 hours of on-the-job work and training, which hours are excluded from the time spent at related instruction.

(4) It requires related instruction to supplement on-the-job training. Such instruction may be given in a classroom through occupational or industrial courses or outside of a classroom through correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the department.

~~(5) It involves the development of skill sufficiently broad to be applicable in like occupations throughout an industry, rather than of restricted application to the products or services of any one company.~~

~~(6) It does not fall into any of the following categories:~~

~~(a) Selling, retailing, or similar occupations in the distributive field.~~

~~(b) Managerial occupations.~~

~~(c) Professional and scientific vocations for which entrance requirements customarily require an academic degree.~~

Section 7. Paragraph (b) of subsection (1) of section 1008.44, Florida Statutes, is amended to read:

1008.44 CAPE Industry Certification Funding List and CAPE Postsecondary Industry Certification Funding List.—

(1) Pursuant to ss. 1003.4203 and 1003.492, the Department of Education shall, at least annually, identify, under rules adopted by the State Board of Education, and the Commissioner of Education may at any time recommend adding the following certificates, certifications, and courses:

(b) No more than 30 ~~15~~ CAPE Digital Tool certificates

limited to the areas of word processing; spreadsheets; sound, motion, and color presentations; digital arts; cybersecurity; and coding pursuant to s. 1003.4203(3) that do not articulate for college credit. Such certificates shall be annually identified on the CAPE Industry Certification Funding List ~~and updated solely by the Chancellor of Career and Adult Education~~. The certificates shall be made available to students in elementary school and middle school grades and, if earned by a student, shall be eligible for additional full-time equivalent membership pursuant to s. 1011.62(1)(o)1.

Section 8. Subsection (2) of section 1009.42, Florida Statutes, is amended to read:

1009.42 Financial aid appeal process.—

(2) The president of each state university and each Florida College System institution, each district school board that operates a career center pursuant to s. 1001.44, and each charter technical career center that operates pursuant to s. 1002.34 shall establish a procedure for appeal, by students, of grievances related to the award or administration of financial aid at the institution.

Section 9. This act shall take effect July 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 Appropriations

BILL:	PCS/SB 1166 (126962)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Gaetz
SUBJECT:	Education Funding
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sikes	Elwell	AED	**Recommend: Fav/CS**
2.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1166 updates and establishes numerous early learning, public K-12, and postsecondary education statutes relating to the School Readiness program, public school funding and policy issues, the Adults with Disabilities Workforce Education Pilot Program, and the Distinguished Florida College System Program. Specifically, the bill:

- Revises provisions relating to health and safety standards and eligibility for the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant;
- Authorizes and codifies changes to the Florida Education Finance Program (FEFP) funding formula;
- Makes the Adults with Disabilities Workforce Education Pilot Program, established in s. 1004.935, F.S., a permanent program by removing its pilot status and sunset date; and
- Establishes the Distinguished Florida College System Program to recognize Florida's highest-performing colleges.

The proposed Senate General Appropriations Bill, SPB 2500, contains funding for the provisions of this bill which require an appropriation. SPB 2500 appropriates $614,755 to the Department of Children and Families for the additional licensing and inspection requirements related to the School Readiness program. Also, $2 million is appropriated for the Distinguished Florida College System Program in SPB 2500.

SPB 2500 also appropriates $12,208,418 in the FEFP for the federally connected student supplement. The other changes to the FEFP have no impact on state funds. However, individual school districts may experience an increase or decrease in their ESE Guaranteed Allocation based on the results of the October full-time equivalent (FTE) student survey.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Child Care and Development Block Grant (CCDBG)

The Office of Child Care (OCC) of the United States Department of Health and Human Services supports low-income working families by providing access to affordable, high-quality early care and afterschool programs.[1] The OCC administers the Child Care and Development Fund (CCDF) and works with state, territory and tribal governments to provide support for children and their families to promote family economic self-sufficiency and to help children succeed in school and life through affordable, high-quality early care and afterschool programs.[2] The CCDF provides funding for state efforts to provide child care services for low-income family members who work, train for work, attend school, or whose children receive or need to receive protective services.[3] Block grant funding can be used for public or private, religious or non-religious, and center or home-based care.[4] Child care programs that accept funding must comply with state health and safety requirements.[5]

School Readiness Program

Florida's Office of Early Learning (OEL)[6] is the designated lead agency for purposes of administering the CCDF Block Grant Trust Fund and provides state-level administration for the School Readiness program.[7] The School Readiness program is a state-federal partnership between the OEL and the OCC.[8] The School Readiness program receives funding from a mixture of state and federal sources, including the federal CCDF, the federal Temporary Assistance for Needy Families (TANF) block grant, general revenue and other state funds.[9] The School Readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.

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[1] Office of Child Care, *What We Do*, http://www.acf.hhs.gov/programs/occ/about/what-we-do (last visited January 27, 2016).
[2] *Id.*
[3] U.S. Department of Education, Office of Non-Public Education, http://www2.ed.gov/about/offices/list/oii/nonpublic/childcare.html (last visited January 27, 2016).
[4] *Id.*
[5] *Id.*
[6] In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE).The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the School Readiness program and the Voluntary Prekindergarten Education Program. Section 1, 2013-252, L.O.F., *codified as* s. 1001.213, F.S.
[7] Section 1002.82(1), F.S.
[8] Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q.
[9] Specific Appropriation 82, s. 2, ch. 2015-232, L.O.F.

The School Readiness program utilizes a variety of providers to deliver program services, such as licensed and unlicensed child care providers and public and nonpublic schools.[10] The Florida Department of Children and Families' Office of Child Care Regulation (OCCR), as the agency responsible for the state's child care provider licensing program, regulates some, but not all, of the child care providers that provide early learning programs.[11] The program is administered at the county or regional level by early learning coalitions (ELC).[12]

In order to be eligible to deliver the School Readiness program, a provider must be:[13]

- A licensed child care facility;
- A licensed or registered family day care home (FDCH);
- A licensed large family child care home (LFCCH);
- A public school or non-public school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An informal child care provider authorized in the state's CCDF plan.[14]

On November 19, 2014, the Child Care and Development Block Grant (CCDBG) Act of 2014 was signed into law reauthorizing the CCDF for the first time since 1996.[15] The new law prescribes health and safety requirements for School Readiness program providers and requires transparent information to parents and the general public about available child care choices.[16]

While Florida's School Readiness program currently meets many of the new federal requirements, there are specific federal requirements that necessitate changes to Florida law including:[17]

- Screening for child care staff to include searches of the National Sex Offender Registry, as well as searches of state criminal records, the sex offender registry and child abuse and neglect registry of any state in which the child care personnel resided during the preceding 5 years.[18]

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[10] Section 1002.88(1)(a), F.S.
[11] *See* ss. 402.301-319, F.S., and part VI, ch. 1002, F.S.
[12] *Sections 1002.83-1002.85, F.S.* There are currently 30 ELCs, but 31 is the maximum permitted by law. Section 1002.83(1), F.S. *See* Florida's Office of Early Learning, *Early Learning Coalition Directory* (Jan. 11, 2016), *available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Coalition/Coalition%20Directory/CoalitionDirectory%201.11.16.pdf.
[13] Section 1002.88(1)(a), F.S.
[14] *See* Florida Office of Early Learning, *Florida's Child Care and Development Fund State Plan FFY 2014-15, available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015_CCDF_Plan_%20Optimized.pdf. The CCDF State Plan for 2016-2018 is due March 1, 2016 to the Administration for Children and Families and will become effective, once approved, on June 1, 2016. Florida Office of Early Learning, CCDF Plan, http://www.floridaearlylearning.com/oel_resources/ccdf_plan.aspx (last visited January 27, 2016).
[15] Office of Child Care, *CCDF Reauthorization*¸ http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization (last visited January 27, 2016).
[16] *Id.*
[17] Pub. L. No. 113-186, 128 Stat. 1971, Child Care and Development Block Grant Act Reauthorization (2014), *available at* https://www.gpo.gov/fdsys/pkg/PLAW-113publ186/pdf/PLAW-113publ186.pdf.
[18] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b)

- Posting of monitoring and inspection reports through electronic means.[19]
- Providing parents and the general public, information, via a website, regarding:
  - The availability of child care services to promote informed child care choices;
  - The process for licensing child care providers;
  - The conducting of background screening;
  - The monitoring and inspection of child care providers; and
  - The offenses that would prevent individuals and entities from serving as child care providers in the state.[20]
- Inspecting license-exempt providers receiving CCDBG funds for compliance with health, safety, and fire standards.[21]
- Requiring disaster preparedness plan to include procedures for staff and volunteer emergency preparedness training and practice drills.[22]
- Certifying in the state plan, compliance with the child abuse reporting requirements of the Child Abuse Prevention and Treatment Act.[23]

Florida Education Finance Program

The Florida Education Finance Program (FEFP) is the primary mechanism for funding the operating costs of Florida school districts.[24] The FEFP is comprised of multiple categorical funds and factors which, when multiplied by the full-time equivalent (FTE) students, generates the annual operational allocation for each school district.

Exceptional Student Education Guaranteed Allocation

In order to provide exceptional education and related services, an Exceptional Student Education (ESE) Guaranteed Allocation was established by the Legislature to provide funding through the FEFP in addition to the basic program funding.[25] This allocation is a lump sum that is derived from the number of FTE students and the cost factors associated with the matrix of services (matrix) to document the services that each student with an exceptionality will receive.[26]

The Florida Department of Education (DOE) developed the Matrix of Services Handbook to provide districts, schools and teachers with information about the matrix required for selected students with exceptionalities.[27] The matrix is designed with five levels in each of the following five domain areas:[28]

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[19] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C)
[20] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C)
[21] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(K).
[22] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(U).
[23] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(L).
[24] Florida Department of Education, *2015-16 Funding for Florida School Districts* available at http://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf
[25] Florida Department of Education, *Matrix of Services Handbook* available at http://www.fldoe.org/core/fileparse.php/7690/urlt/2015MatrixServices.pdf
[26] Section 1011.62 (1)(e)1.a., F.S.
[27] Florida Department of Education, *Matrix of Services Handbook* available at http://www.fldoe.org/core/fileparse.php/7690/urlt/2015MatrixServices.pdf
[28] *Id.*

- Curriculum and Learning Environment: This domain addresses services provided to the student in the areas of curriculum, instructional strategies and learning environment.
- Social or Emotional Behavior: This domain includes services provided to meet identified social and emotional needs of students with exceptionalities, such as positive behavioral supports, behavioral interventions, social skills development, socialization and counseling as a related service.
- Independent Functioning: This domain includes services that are necessary for the independent functioning of students with exceptionalities, such as instruction in organizational strategies, assistance for activities of daily living and self-care, physical therapy, occupational therapy, orientation and mobility training and supervision of students to ensure physical safety
- Health Care: This domain addresses services provided to students with exceptionalities who have health care needs. Included in this domain are services related to monitoring and assessment of health conditions, provision of related health care services and interagency collaboration.
- Communication: This domain includes services provided to support the communication needs of students with exceptionalities. Services included in this domain are personal assistance, instructional interventions, speech or language therapy and the use of alternative and augmentative communication systems.

A student is evaluated within each of these five domains to determine the appropriate level of service the student requires. Level 1 represents the lowest level of service and Level 5 represents the highest level of service.[29] The frequency and intensity of the service and the qualifications of personnel required to provide the service are critical factors that impact the determination of the appropriate level of service for the student.[30]

The ESE Guaranteed Allocation was established in 2000 in conjunction with the elimination of the mandatory requirement for the determination of a matrix of services for Levels 1 through 3 ESE students. ESE services for students whose level of service is Levels 1 through 3 are funded through the ESE Guaranteed Allocation.[31] These students generate FTE funding using the appropriate basic program cost factor for their grade level.[32] The ESE Guaranteed Allocation provides for the additional services needed for these exceptional students. [33] For the 2015-2016 fiscal year, the average ESE Guaranteed Allocation funding per FTE is $2,007.[34] Students whose level of service is Level 4 or 5 do not receive funds from the ESE Guaranteed Allocation, but

[29] *Id.*
[30] *Id.*
[31] Florida Department of Education, *2015-16 Funding for Florida School Districts* available at http://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf
[32] The basic program cost factors are as follows:
- For grades K-3, the cost factor is 1.115
- For grades 4-8, the cost factor is 1.000
- For grades 9-12, the cost factor is 1.005

[33] Florida Department of Education, *2015-16 Funding for Florida School Districts* available at http://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf
[34] Florida Legislature, Conference Report on SB 2500-A, *Public School Funding: The Florida Education Finance Program (FEFP)* available at http://flsenate.gov/PublishedContent/Session/2015A/Appropriations/Documents/FEFP_Conference_Report.pdf

instead generate weighted funding using a higher program cost factor which provides for both their education program and their exceptional services.[35]

For the 2015-2016 fiscal year, $959,182,058 was appropriated within the FEFP for the ESE Guaranteed Allocation.[36] The allocation for each district is calculated once based on projected ESE and total FTE enrollment and is not recalculated during the school year.[37] Since the allocation is not recalculated, a school district that overestimates its ESE FTE keeps the additional funds. A school district that underestimates their ESE FTE does not receive additional funds to support its ESE student population.

Federally Connected Student Supplement

The federally connected student supplement was established in the 2015-2016 Implementing Bill, ch. 2015-222, L.O.F., to provide funding to school districts to support the education of students connected with federally-owned military installations, National Aeronautics and Space Administration (NASA) property, and Indian lands. To be eligible for this supplement, the district must also be eligible for federal impact aid funds, pursuant to Title VIII of the Elementary and Secondary Education Act of 1965.

The supplement is based on two components: a student allocation and an exempt-property allocation. The student allocation is based on the number of students in the district reported for federal impact aid, including students with disabilities, who

- Reside with a parent who is on active duty in the uniformed services or is an accredited foreign government official and military officer;
- Reside on eligible federally-owned Indian lands; or
- Reside with a civilian parent who lives or works on eligible federal property connected with a military installation or NASA. The number of these students shall be multiplied by a factor of 0.5.

The exempt-property allocation is based on the district's real property value of exempt federal property of federal impact aid lands reserved as military installations, NASA properties, or federally-owned Indian lands, multiplied by the millage authorized and levied under s. 1011.71 (2), F.S. The student allocation and the exempt-property allocation are added together for each eligible district to produce the federally connected student supplement.

The federal impact aid funding for Florida school districts has decreased by 50 percent from $13.9 million in the 1993-1994 fiscal year to $6.9 million in the 2013-2014 fiscal year. Currently, 14 school districts in Florida qualify for federal impact aid. These districts received $12,404,401 through the federally connected student supplement as appropriated in the 2015-2016 General Appropriations Act (GAA).

[35] The 2015-2016 Level 4 cost factor is 3.613 and the Level 5 cost factor is 5.258.
[36] Florida Legislature, Conference Report on SB 2500-A, *Public School Funding: The Florida Education Finance Program (FEFP)* available at http://flsenate.gov/PublishedContent/Session/2015A/Appropriations/Documents/FEFP_Conference_Report.pdf
[37] Section 1011.62 (1)(e)2, F.S.

Career and Professional Education (CAPE) Dual Enrollment Industry Certification Funding

Performance funding for a CAPE industry certification earned through dual enrollment is provided to the Florida College System institution or district career center providing the instruction only if the industry certification is eligible for funding on the Postsecondary Industry Certification Funding List approved by the State Board of Education.[38]

CAPE Bonus Funding

Bonus funding is authorized for school districts and for teachers if a student earns a CAPE industry certification.[39] Depending on the certification earned, a school district receives bonus funding of 0.1, 0.2, 0.3, 0.5, or 1.0 FTE. Teacher bonus funding is awarded for CAPE industry certifications as follows:

- A bonus in the amount of $25 is awarded for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.[40]
- A bonus in the amount of $50 is awarded for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2, 0.3, 0.5, and 1.0.[41]
- CAPE industry certification bonuses may not exceed $2,000 to a teacher in any given school year.[42]

Adults with Disabilities Workforce Education Pilot Program

The Adults with Disabilities Workforce Education Pilot Program was created in 2012 to operate for two years in Hardee, DeSoto, Manatee, and Sarasota Counties and provide the option of receiving a scholarship for instruction at private schools for up to 30 students who meet the following requirements:[43]

- Have a disability;[44]
- Are 22 years of age;
- Are receiving instruction from an instructor in a private school to meet the high school graduation requirements in s. 1003.428 or s. 1003.4282, F.S.;
- Do not have a standard high school diploma or a special high school diploma; and
- Receive supported employment services.[45]

In 2014, the Legislature extended the program for an additional two years through June 30, 2016.

[38] s. 1011.80, F.S.
[39] Sections 1011.62 (1)(o), F.S.
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] Chapter 2012-134, Laws of Fla., s. 12, codified in s. 1004.935, F.S.
[44] A student with a disability includes a student who is documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.
[45] Supported employment services means employment that is located or provided in an integrated work setting with earnings paid on a commensurate wage basis and for which continued support is needed for job maintenance.

III. Effect of Proposed Changes:

This bill updates and establishes numerous early learning, public K-12, and postsecondary education statutes.

School Readiness Health and Safety Standards

The bill revises provisions relating to health and safety standards and eligibility for the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant (CCDBG).

Specifically, the bill:

- Increases health and safety standards.
- Expands requirements for employment history checks and child care personnel background screenings.
- Expands availability of child care information, including inspection and monitoring reports.
- Expands School Readiness provider standards to include preservice and in-service training requirements and appropriate group size and staff-to-child ratios.
- Aligns child eligibility criteria to the federal requirements.

Current law requires a child care provider to provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children. A licensed provider may satisfy this requirement through compliance with current licensing standards for child care facilities, large family child care homes, or family day care homes. Faith-based child care providers, informal child care providers, and nonpublic schools exempt from licensure satisfy this requirement by posting a health and safety checklist adopted by the Office of Early Learning (OEL).

Pursuant to the CCDBG Reauthorization, all School Readiness program providers must meet a minimum level of health and safety requirements and receive at least one annual inspection. The bill requires registered or license-exempt School Readiness providers to comply with the health and safety checklist and training requirements adopted by the OEL, as well as the child care personnel background screening requirements.

Screening of Child Care Personnel

The bill redefines the definition of "screening" to include employment history checks consisting of documented attempts to contact each employer that employed the child care applicant within the preceding 5 years and documented findings from such contact. The bill requires that a screening include a search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years. In effect, the bill revises the definition of screening to align it with the new federal requirements, and requires that any School Readiness provider screen individuals seeking employment in a manner consistent with those requirements.

The bill authorizes the use of information in the Department of Children and Families' (DCF) Central Abuse Hotline for purposes of conducting background screenings of child care personnel. Generally, the use of information in the Central Abuse Hotline is prohibited from being used for employment screenings, except in specified instances (*e.g.*, child or adult protective investigations or licensure or approval of child care facilities). Furthermore, the bill authorizes employees, authorized agents, and contract providers of the OEL to have access to DCF child abuse and neglect reports and records to ensure compliance with the federal requirements.

Disqualification from Employment

The bill disqualifies a person from employment with a School Readiness provider if the person has been convicted of a felony offense relating to:

- Domestic violence.[46]
- Murder.[47]
- Manslaughter; aggravated manslaughter of an elderly person or a disabled adult; aggravated manslaughter of a child; or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.[48]
- Aggravated assault.[49]
- Aggravated battery.[50]
- Kidnapping.[51]
- Luring or enticing a child.[52]
- Leading, taking, enticing, or removing a minor, with criminal intent, pending custody proceedings, dependency proceedings, or proceedings concerning alleged abuse or neglect of a minor.[53]
- Sexual battery.[54]
- Sexual activity with or solicitation of a child by a person in familial or custodial authority.[55]
- Unlawful sexual activity with certain minors.[56]
- Female genital mutilation.[57]
- Arson.[58]
- Incest.[59]
- Child abuse, aggravated child abuse, neglect of a child.[60]

[46] Chapter 741, F.S.
[47] Section 782.04, F.S.
[48] Section 782.07, F.S.
[49] Section 784.021, F.S.
[50] Section 784.045, F.S.
[51] Section 787.01, F.S.
[52] Section 787.025, F.S.
[53] Section 787.04(2) and (3), F.S.
[54] Section 794.011, F.S.
[55] Former s. 794.041, F.S.
[56] Section 794.05, F.S.
[57] Section 794.08, F.S.
[58] Section 806.01, F.S.
[59] Section 826.04, F.S.
[60] Section 827.03, F.S.

- Contributing to the delinquency or dependency of a child.[61]
- Sexual performance by a child.[62]
- Sexual misconduct in juvenile justice programs.[63]

Also, the bill disqualifies any person who has been convicted of a misdemeanor offense relating to battery of a minor[64] or luring or enticing a child.[65]

Furthermore, if the person committed a criminal act in another state or under federal law which, if committed in this state, would constitute any of the above-listed offenses, he or she is disqualified from employment with a School Readiness provider.

Affidavit of Compliance with Mandatory Child Abuse Reporting

The bill requires each child care facility, family day care home, and large family day care home to annually submit an affidavit of compliance with the mandatory reporting requirements in Florida law.[66] The change in law is consistent with the new federal requirement that child care personnel of School Readiness providers be familiar and comply with the mandatory child abuse, abandonment, or neglect reporting requirements.

Department of Children and Families Inspection and Monitoring of School Readiness Providers

The bill requires School Readiness providers to permit access to the DCF to inspect facilities, personnel, and records for the purpose of verifying compliance with the standards established and adopted by the OEL. Under the bill, inspection and monitoring of School Readiness providers by the DCF or local licensing agencies must be governed by a memorandum of understanding between the OEL and the DCF or local licensing agencies for verifying compliance solely with the standards contained in the statewide provider contract and the health and safety checklist. Furthermore, the bill requires that a School Readiness provider's contract be terminated if the provider refuses permission for entry or inspection.

Child Care Information

The bill requires the DCF and local licensing agencies to make electronically available to the public all licensing standards and procedures, health and safety standards for School Readiness providers, monitoring and inspection reports, and the names and addresses of licensed child care facilities, School Readiness providers, and licensed or registered family day care homes. Additionally, the bill requires the DCF to make publicly available the following information:

- Number of deaths, serious injuries, and instances of substantiated child abuse which have occurred in child care settings each year;
- Research and best practices in child development; and
- Resources regarding social-emotional development, parent and family engagement, healthy eating, and physical activity.

[61] Section 827.04, F.S.
[62] Section 827.071, F.S.
[63] Section 985.701, F.S.
[64] Section 784.03, F.S.
[65] Section 787.025, F.S.
[66] Section 39.201, F.S.

Requiring that such information be made publicly available is consistent with the federal requirements in the CCDBG Reauthorization.

The Office of Early Learning's Duty to Align Standards to the Federal Requirements

Consistent with federal law, the bill requires the OEL to:

- Develop and implement strategies to increase the supply and improve the quality of child care services for infants and toddlers, children with disabilities, children who receive care during nontraditional hours, children in underserved areas, and children in areas that have significant concentrations of poverty and unemployment.
- Establish preservice and in-service training requirements addressing, at a minimum:
  - School Readiness child development standards.
  - Health and safety requirements.
  - Social-emotional behavior intervention models.
- Establish standards for emergency preparedness plans.
- Establish group size and staff-to-child ratios.
- Establish eligibility criteria, including income-based limitations and family assets.

Child Eligibility

The bill revises provisions relating to child eligibility to align with the federal requirement that once a child is deemed eligible for School Readiness program services, he or she remains eligible for a minimum of 12 months. Under current law, a child's eligibility may be redetermined at any time based on a change in family income or upon notification of a parent's change in employment status. Consequently, the bill repeals a requirement that each early learning coalition (ELC) redetermine eligibility twice per year for an additional 50 percent of the ELC's enrollment through a statistically valid random sampling.

Pursuant to the CCDBG Reauthorization, the bill provides that if a child's eligibility priority category requires the child to be from a working family, he or she will become ineligible to receive School Readiness program services if the parent does not reestablish employment or resume attendance at a job training or educational program within 90 days after becoming unemployed or ceasing to attend the job training or educational program. Current law affords a parent 60 days to reestablish employment or resume attendance at a job training or educational program. The change will provide additional time for parents to reestablish employment or resume attendance at a job training or educational program, so that their children may continue to receive School Readiness program services.

Also, the bill authorizes an ELC to temporarily waive the parent's copayment for a child whose family's income is at or below the federal poverty level and whose family experiences a natural disaster or an event that limits the parent's ability to pay. Authorizing waiver of the copayment is consistent with federal law, which contemplates that a copayment not be a barrier to families receiving School Readiness program services.

Exceptional Student Education Guaranteed Allocation

The bill authorizes the Florida Department of Education (DOE) to recalculate the Exceptional Student Education (ESE) Guaranteed Allocation for each school district. The ESE Guaranteed Allocation will be calculated initially in the General Appropriations Act (GAA), and recalculated based on each school district's actual ESE and total full-time equivalent (FTE) enrollment as determined by the October FTE survey. This recalculation will ensure school districts receive their appropriate share of the ESE Guaranteed Allocation based on actual enrollment rather than projected enrollment.

Federally Connected Student Supplement

The bill codifies the federally connected student supplement categorical within the Florida Education Finance Program (FEFP). The school districts which receive federal impact aid under Title VIII of the Elementary and Secondary Education Act of 1965, will continue to be eligible for additional FEFP funding under this categorical.

Career and Professional Education (CAPE) Dual Enrollment Industry Certification Funding

The bill authorizes performance funding for a CAPE industry certification earned through a dual enrollment course, which is not a fundable certification on the Postsecondary Industry Certification Funding List or is earned as a result of an agreement with a nonpublic postsecondary institution, to be funded in the same manner as a non-dual enrollment course industry certification. The school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

CAPE Teacher Bonus Funding

The bill establishes two new tiers of bonuses available to CAPE industry certification teachers under s. 1011.62 (1)(o), F.S. A teacher providing in instruction to a student in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3 will earn a $75 bonus, which is $25 more than currently authorized. A teacher providing instruction to a student in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0 will earn a $100 bonus, which is $50 more than currently authorized. The bill also eliminates the $2,000 maximum annual bonus for teachers providing instruction in courses leading to these CAPE industry certifications.

Adults with Disabilities Workforce Education Pilot Program

The bill removes the pilot status and sunset provision for the Adults with Disabilities Workforce Education Pilot Program, thereby making the program permanent and no longer subject to expiration.

Distinguished Florida College System Program

The bill establishes the Distinguished Florida College System Program to recognize Florida's highest-performing colleges. A Florida college earns the designation as a distinguished college by the State Board of Education by meeting at least five of the seven excellence standards. The excellence standards established for the program are as follows:

- A 150 percent-of-normal-time completion rate[67] of 50 percent or higher;
- A 150 percent-of-normal-time completion rate for Pell Grant recipients of 40 percent or higher;
- A retention rate of 70 percent or higher;
- A continuing education, or transfer, rate of 72 percent or higher for students graduating with an associate of arts degree;
- A licensure passage rate on the National Council Licensure Examination for Registered Nurses (NCLEX-RN) of 90 percent or higher for first-time exam takers;
- A job placement or continuing education rate of 88 percent or higher for workforce programs;
- A time-to-degree for students graduating with an associate of arts degree of 2.25 years or less for first-time-in-college students with accelerated college credits;

A Florida College System institution designated as a distinguished college is eligible for funding as specified in the GAA.

Powers and Duties of a District School Board

The bill provides a district school board with the authority to visit schools, give suggestions for improvement, and advise citizens with the view of promoting interest in education and improving the school.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[67] The National Center for Education Statistics, in the Integrated Postsecondary Education Data System (IPEDS) glossary (available at http://nces.ed.gov/ipeds/glossary/?charindex=N), defines normal time to completion as the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. For example, an associate's degree in a standard term-based institution has a normal time of completion of 2 years (4 semesters). The 150 percent of normal time to completion for an associate's degree would be 3 years (6 semesters). The 150 percent normal time of completion rate reflects the percentage of full-time students who complete all requirements for a degree or certificate within 150 percent of the amount of time necessary for a student to complete a degree or certificate according to the institution's catalog.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/SB 1166, teachers providing instruction in courses leading to CAPE industry certifications may be eligible for additional bonus funds for each student attaining specific CAPE industry certifications. The bill also removes the $2,000 annual limit for these CAPE teacher bonuses.

C. Government Sector Impact:

The proposed Senate General Appropriations Bill, SPB 2500, contains funding for the provisions of this bill which require an appropriation. SPB 2500 appropriates $614,755 to the Department of Children and Families for the additional licensing and inspection requirements related to the School Readiness program. Also, $2 million is appropriated for the Distinguished Florida College System Program in SPB 2500.

SPB 2500 also appropriates $12,208,418 in the FEFP for the federally connected student supplement. The other changes to the FEFP have no impact on state funds. However, individual school districts may experience an increase or decrease in their ESE Guaranteed Allocation based on the results of the October FTE survey.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.202, 402.302, 402.3057, 402.306, 402.311, 402.319, 409.1757, 435.07, 1001.42, 1002.82, 1002.84, 1002.87, 1002.88, 1002.89, 1004.935, 1011.62, and 1011.71.

The bill creates section 1011.67 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 Education on January 28, 2016:
The committee substitute:

- Revises provisions relating to health and safety standards and eligibility for the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant;
- Authorizes and codifies changes to the Florida Education Finance Program (FEFP) funding formula, including:
  - Codifying the federally connected student supplement,
  - Amending CAPE teacher bonus awards and removing the bonus limit,
  - Authorizes performance funding for a CAPE industry certification earned through a dual enrollment course, which is not a fundable certification on the Postsecondary Industry Certification Funding List or is earned as a result of an agreement with a nonpublic postsecondary institution.
- Makes the Adults with Disabilities Workforce Education Pilot Program, established in s. 1004.935, F.S., a permanent program by removing its pilot status and sunset date; and
- Establishes the Distinguished Florida College System Program to recognize Florida's highest-performing colleges.
- Adds to the powers of a district school board, the authority to visit schools, give suggestions for improvement, and advise citizens to promote interest in education.

B. Amendments:

None.

927682

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsection (27) of section 1001.42, Florida Statutes, is redesignated as subsection (28), and a new subsection (27) is added to that section, 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:


927682

(27) VISITATION OF SCHOOLS.—Visit the schools, observe the management and instruction, give suggestions for improvement, and advise citizens with the view of promoting interest in education and improving the school.

Section 2. Section 1001.67, Florida Statutes, is created to read:

1001.67 Distinguished Florida College System Program.—A collaborative partnership is established between the State Board of Education and the Legislature to recognize the excellence of Florida's highest-performing Florida College system institutions.

(1) EXCELLENCE STANDARDS.—The following excellence standards are established for the program:

(a) A 150 percent-of-normal-time completion rate of 50 percent or higher, as calculated by the Division of Florida Colleges.

(b) A 150 percent-of-normal-time completion rate for Pell Grant recipients of 40 percent or higher, as calculated by the Division of Florida Colleges.

(c) A retention rate of 70 percent or higher, as calculated by the Division of Florida Colleges.

(d) A continuing education, or transfer, rate of 72 percent or higher for students graduating with an associate of arts degree, as reported by the Florida Education and Training Placement Information Program (FETPIP).

(e) A licensure passage rate on the National Council Licensure Examination for Registered Nurses (NCLEX-RN) of 90 percent or higher for first-time exam takers, as reported by the Board of Nursing.

(f) A job placement or continuing education rate of 88 percent or higher for workforce programs, as reported by FETPIP.

(g) A time-to-degree for students graduating with an associate of arts degree of 2.25 years or less for first-time-in-college students with accelerated college credits, as reported by the Southern Regional Education Board.

(2) DISTINGUISHED COLLEGE DESIGNATION.—The State Board of Education shall designate each Florida College System institution that meets five of the seven standards identified in subsection (1) as a distinguished college.

(3) DISTINGUISHED COLLEGE SUPPORT.—A Florida College System institution designated as a distinguished college by the State Board of Education is eligible for funding as specified in the General Appropriations Act.

Section 3. Paragraphs (a) and (b) of subsection (6), subsection (16), paragraph (a) of subsection (17), and paragraph (a) of subsections (22) of section 1002.20, Florida Statutes, are amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(a) *Public educational school choices.*—Parents of public school students may seek any ~~whatever~~ public educational school choice options that are applicable and available to students throughout the state ~~in their school districts~~. These options

927682

may include controlled open enrollment, single-gender programs, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate of Secondary Education (pre-AICE), CAPE digital tools, CAPE industry certifications, collegiate high school programs, Advanced International Certificate of Education, early admissions, credit by examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public educational ~~school~~ choice options of the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.

(b) *Private educational ~~school~~ choices.*—Parents of public school students may seek private educational ~~school~~ choice options under certain programs.

1. Under the McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability may request and receive a McKay Scholarship for the student to attend a private school in accordance with s. 1002.39.

2. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch or who is currently placed, or during the previous state fiscal year was placed, in foster care as defined in s. 39.01 may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with s. 1002.395.


927682

3. Under the Florida Personal Learning Scholarship Accounts Program, the parent of a student with a qualifying disability may apply for a personal learning scholarship to be used for individual educational needs in accordance with s. 1002.385.

(16) SCHOOL ACCOUNTABILITY AND SCHOOL IMPROVEMENT RATING REPORTS; FISCAL TRANSPARENCY.—Parents of public school students have the right ~~are entitled~~ to an easy-to-read report card about the school's grade designation or, if applicable under s. 1008.341, the school's improvement rating, and the school's accountability report, including the school financial report as required under s. 1010.215. The school financial report must be provided to the parents and indicate the average amount of money expended per student in the school, which must also be included in the student handbook or a similar publication.

(17) ATHLETICS; PUBLIC HIGH SCHOOL.—

(a) *Eligibility.*—Eligibility requirements for all students participating in high school athletic competition must allow a student to be immediately eligible in the school in which he or she first enrolls each school year, the school in which the student makes himself or herself a candidate for an athletic team by engaging in practice before enrolling, or the school to which the student has transferred ~~with approval of the district school board~~, in accordance with ~~the provisions of~~ s. 1006.20(2)(a).

(22) TRANSPORTATION.—

(a) *Transportation to school.*—Public school students shall be provided transportation to school, in accordance with ~~the provisions of~~ s. 1006.21(3)(a). Public school students may be provided transportation to school in accordance with the

927682

controlled open enrollment provisions of s. 1002.31(2).

Section 4. Section 1002.31, Florida Statutes, is amended to read:

1002.31 Controlled open enrollment; Public school parental choice.—

(1) As used in this section, "controlled open enrollment" means a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential educational ~~school~~ choice as a significant factor.

(2)(a) Beginning by the 2017-2018 school year, as part of a school district's or charter school's controlled open enrollment process, and in addition to the existing public school choice programs provided in s. 1002.20(6)(a), each district school board or charter school shall allow a parent from any school district in the state whose child is not subject to a current expulsion or suspension order to enroll his or her child in and transport his or her child to any public school, including charter schools, that has not reached capacity in the district, subject to the maximum class size pursuant to s. 1003.03 and s. 1, Art. IX of the State Constitution. The school district or charter school shall accept the student, pursuant to that school district's or charter school's controlled open enrollment process, and report the student for purposes of the school district's or charter school's funding pursuant to the Florida Education Finance Program. A school district or charter school may provide transportation to students described under this section.

(b) Each school district and charter school capacity

927682

determinations for its schools must be current and must be identified on the school district and charter school's websites. In determining the capacity of each district school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35. Each charter school governing board shall determine capacity based upon its charter school contract.

(c) Each district school board and charter school governing board must provide preferential treatment in its controlled open enrollment process to all of the following:

1. Dependent children of active duty military personnel whose move resulted from military orders.

2. Children who have been relocated due to a foster care placement in a different school zone.

3. Children who move due to a court ordered change in custody due to separation or divorce, or the serious illness or death of a custodial parent.

4. Students residing in the school district.

(d) As part of its controlled open enrollment process, a charter school must provide preferential treatment in its controlled open enrollment participation process to the enrollment limitations pursuant to s. 1002.33(10)(e)1., 2., 5., 6., and 7, if these special purposes are identified in the charter agreement. Each charter school shall annually by January 1 post on its website the application process required to participate in controlled open enrollment, consistent with this section and s. 1002.33.


927682

(e) Students residing in the district, including charter school students, may not be displaced by a student from another district seeking enrollment under the controlled open enrollment process.

(f) For purposes of continuity of educational choice, a student who transfers pursuant to this section may remain at the school chosen by the parent until the student completes the highest grade level at the school ~~may offer controlled open enrollment within the public schools which is in addition to the existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment~~.

(3) Each district school board ~~offering controlled open enrollment~~ shall adopt by rule and post on its website the process required to participate in controlled open enrollment. The process ~~a controlled open enrollment plan which~~ must:

(a) Adhere to federal desegregation requirements.

(b) Allow ~~Include an application process required to participate in controlled open enrollment that allows~~ parents to declare school preferences, including placement of siblings within the same school.

(c) Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases.

(d) Afford parents of students in multiple session schools preferred access to controlled open enrollment.

(e) Maintain socioeconomic, demographic, and racial balance.

(f) Address the availability of transportation.

(g) Maintain existing academic eligibility criteria for

public school choice programs pursuant to s. 1002.20(6)(a).

(h) Identify schools that have not reached capacity, as determined by the school district.

(i) Ensure that each district school board adopts a policy to provide preferential treatment pursuant to paragraph (2)(c).

(4) In accordance with the reporting requirements of s. 1011.62, each district school board shall annually report the number of students exercising public school choice, by type ~~attending the various types of public schools of choice in the district~~, in accordance with ~~including schools such as virtual instruction programs, magnet schools, and public charter schools, according to~~ rules adopted by the State Board of Education.

(5) For a school or program that is a public school of choice under this section, the calculation for compliance with maximum class size pursuant to s. 1003.03 is the average number of students at the school level.

(6)(a) A school district or charter school may not delay eligibility or otherwise prevent a student participating in controlled open enrollment or a choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities.

(b) A student participating in a sport at a school may not participate in that same sport at another school during that school year, unless the student meets one of the following criteria:

1. Dependent children of active duty military personnel whose move resulted from military orders.

2. Children who have been relocated due to a foster care

927682

placement in a different school zone.

3. Children who move due to a court ordered change in custody due to separation or divorce, or the serious illness or death of a custodial parent.

4. Authorized for good cause in district or charter school policy.

Section 5. Paragraph (a) of subsection (2), paragraphs (a) and (b) of subsection (6), paragraphs (a) and (d) of subsection (7), paragraphs (g), (n), and (p) of subsection (9), paragraph (d) of subsection (10), paragraph (e) of subsection (17), and paragraph (a) of subsection (20) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(2) GUIDING PRINCIPLES; PURPOSE.—

(a) Charter schools in Florida shall be guided by the following principles:

1. Meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state’s public school system.

2. Promote enhanced academic success and financial efficiency by aligning responsibility with accountability.

3. Provide parents with sufficient information on whether their child is reading at grade level and whether the child gains at least a year’s worth of learning for every year spent in the charter school. For a student who exhibits a substantial deficiency in reading, as determined by the charter school, the school shall notify the parent of the deficiency, the intensive interventions and supports used, and the student’s progress in

accordance with s. 1008.25(5).

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity seeking ~~wishing~~ to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.

2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.

3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny an application ~~a charter~~ if the school does not propose a reading curriculum that is evidence-based and includes explicit, systematic, and multisensory reading instructional strategies; however, a sponsor may not require the charter school to implement the reading plan adopted by the school district pursuant to s. 1011.62(9) ~~consistent with effective teaching strategies that are grounded in scientifically based reading research~~.


927682

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Discloses the name of each applicant, governing board member, and all proposed education services providers; the name and sponsor of any charter school operated by each applicant, each governing board member, and each proposed education services provider that has closed and the reasons for the closure; and the academic and financial history of such charter schools, which the sponsor shall consider in deciding whether to approve or deny the application.

7.~~6.~~ Contains additional information a sponsor may require, which shall be attached as an addendum to the charter school application described in this paragraph.

8.~~7.~~ For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

(b) A sponsor shall receive and review all applications for a charter school using the ~~an~~ evaluation instrument developed by the Department of Education. A sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened at the beginning of the school district’s next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an

927682

application submitted later than August 1 if it chooses. In order to facilitate greater collaboration in the application process, an applicant may submit a draft charter school application on or before May 1 with an application fee of $500. If a draft application is timely submitted, the sponsor shall review and provide feedback as to material deficiencies in the application by July 1. The applicant shall then have until August 1 to resubmit a revised and final application. The sponsor may approve the draft application. Except as provided for a draft application, a sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. Before approving or denying any final application, the sponsor shall allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection, within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter

school location, and its projected FTE.

2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3.a. A sponsor shall by a majority vote approve or deny an application no later than 60 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the specific reasons, based upon good cause, supporting its denial of the ~~charter~~ application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education.

b. An application submitted by a high-performing charter school identified pursuant to s. 1002.331 may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:

(I) The application does not materially comply with the requirements in paragraph (a);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs


927682

(9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Material noncompliance is a failure to follow requirements or a violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.

c. If the sponsor denies an application submitted by a high-performing charter school, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based upon the criteria in sub-subparagraph b., supporting its denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the Department of Education. The applicant may appeal the


927682

sponsor's denial of the application directly to the State Board of Education and, if an appeal is filed, must provide a copy of the appeal to the sponsor pursuant to paragraph (c) ~~sub-subparagraph (c)3.b~~.

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of an ~~a charter~~ application within 10 calendar days after such approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. Upon approval of an ~~a charter~~ application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted unless the sponsor allows a waiver of this subparagraph for good cause.

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and


927682

professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Next Generation Sunshine State Standards and evidence-based ~~grounded in scientifically based reading research~~.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in

s. 1002.3105(5), s. 1003.4281, or s. 1003.4282.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct. Admission or dismissal must not be based on a student's academic performance.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and

staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location. The sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school.


927682

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term “relative” means father, mother, son, daughter, brother, sister, uncle, aunt, first

927682

cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(d)~~1.~~ A charter may be terminated by a charter school's governing board through voluntary closure. The decision to cease operations must be determined at a public meeting. The governing board shall notify the parents and sponsor of the public meeting in writing before the public meeting. The governing board must notify the sponsor, parents of enrolled students, and the department in writing within 24 hours after the public meeting of its determination. The notice shall state the charter school's intent to continue operations or the reason for the closure and acknowledge that the governing board agrees to follow the procedures for dissolution and reversion of public funds pursuant to paragraphs (8)(e)-(g) and (9)(o) ~~Each charter school's governing board must appoint a representative to facilitate parental involvement, provide access to information, assist parents and others with questions and concerns, and resolve disputes~~. ~~The representative must reside in the school district in which the charter school is located and may be a~~


927682

~~governing board member, charter school employee, or individual contracted to represent the governing board. If the governing board oversees multiple charter schools in the same school district, the governing board must appoint a separate individual representative for each charter school in the district. The representative's contact information must be provided annually in writing to parents and posted prominently on the charter school's website if a website is maintained by the school. The sponsor may not require that governing board members reside in the school district in which the charter school is located if the charter school complies with this paragraph.~~

~~2. Each charter school's governing board must hold at least two public meetings per school year in the school district. The meetings must be noticed, open, and accessible to the public, and attendees must be provided an opportunity to receive information and provide input regarding the charter school's operations. The appointed representative and charter school principal or director, or his or her equivalent, must be physically present at each meeting.~~

(9) CHARTER SCHOOL REQUIREMENTS.—

(g)1. In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records that constitute their accounting system:

a. In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools"; or

b. At the discretion of the charter school's governing


927682

board, a charter school may elect to follow generally accepted accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

2. Charter schools shall provide annual financial report and program cost report information in the state-required formats for inclusion in district reporting in compliance with s. 1011.60(1). Charter schools that are operated by a municipality or are a component unit of a parent nonprofit organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph.

3. A charter school shall, upon approval of the charter contract, provide the sponsor with a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental funds format prescribed by the Governmental Accounting Standards Board. A high-performing charter school pursuant to s. 1002.331 may provide a quarterly financial statement in the same format and requirements as the uniform monthly financial statement summary sheet. The sponsor shall review each monthly or quarterly financial statement to identify the existence of any conditions identified in s. 1002.345(1)(a).

4. A charter school shall maintain and provide financial information as required in this paragraph. The financial statement required in subparagraph 3. must be in a form prescribed by the Department of Education.

(n)1. The director and a representative of the governing board of a charter school that has earned a grade of "D" or "F" pursuant to s. 1008.34 shall appear before the sponsor to present information concerning each contract component having noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student performance. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a 3-year period, the charter school governing board shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year


927682

period.

c. The sponsor may annually waive a corrective action if it determines that the charter school is likely to improve a letter grade if additional time is provided to implement the intervention and support strategies prescribed by the school improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 4.

d. A charter school is no longer required to implement a corrective action if it improves by at least one letter grade. However, the charter school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

e. A charter school implementing a corrective action that does not improve by at least one letter grade after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve a letter grade if additional time is provided to implement the existing corrective action. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 4.

3. A charter school with a grade of "D" or "F" that improves by at least one letter grade must continue to implement


927682

the strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

4. A charter school's charter contract is automatically terminated if the school earns two consecutive grades of "F" after all school grade appeals are final ~~The sponsor shall terminate a charter if the charter school earns two consecutive grades of "F"~~ unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)3. Such charter schools shall be governed by s. 1008.33;

b. The charter school serves a student population the majority of which resides in a school zone served by a district public school that earned a grade of "F" in the year before the charter school opened and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 days after the department's official release of school grades. The state board may waive termination if the charter school demonstrates that the Learning Gains of its students on statewide assessments are comparable to or better than the Learning Gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for 1 year and may only be granted once. Charter schools that have been in

927682

765 operation for more than 5 years are not eligible for a waiver
766 under this sub-subparagraph.
767
768 The sponsor shall notify the charter school's governing board,
769 the charter school principal, and the department in writing when
770 a charter contract is terminated under this subparagraph. The
771 letter of termination must meet the requirements of paragraph
772 (8)(c). A charter terminated under this subparagraph must follow
773 the procedures for dissolution and reversion of public funds
774 pursuant to paragraphs (8)(e)-(g) and (9)(o).
775 5. The director and a representative of the governing board
776 of a graded charter school that has implemented a school
777 improvement plan under this paragraph shall appear before the
778 sponsor at least once a year to present information regarding
779 the progress of intervention and support strategies implemented
780 by the school pursuant to the school improvement plan and
781 corrective actions, if applicable. The sponsor shall communicate
782 at the meeting, and in writing to the director, the services
783 provided to the school to help the school address its
784 deficiencies.
785 6. Notwithstanding any provision of this paragraph except
786 sub-subparagraphs 4.a.-c., the sponsor may terminate the charter
787 at any time pursuant to subsection (8).
788 (p)1. Each charter school shall maintain a website that
789 enables the public to obtain information regarding the school;
790 the school's academic performance; the names of the governing
791 board members; the programs at the school; any management
792 companies, service providers, or education management
793 corporations associated with the school; the school's annual

927682

budget and its annual independent fiscal audit; the school's grade pursuant to s. 1008.34; and, on a quarterly basis, the minutes of governing board meetings.

2. Each charter school's governing board must appoint a representative to facilitate parental involvement, provide access to information, assist parents and others with questions and concerns, and resolve disputes. The representative must reside in the school district in which the charter school is located and may be a governing board member, a charter school employee, or an individual contracted to represent the governing board. If the governing board oversees multiple charter schools in the same school district, the governing board must appoint a separate representative for each charter school in the district. The representative's contact information must be provided annually in writing to parents and posted prominently on the charter school's website. The sponsor may not require governing board members to reside in the school district in which the charter school is located if the charter school complies with this subparagraph.

3. Each charter school's governing board must hold at least two public meetings per school year in the school district where the charter school is located. The meetings must be noticed, open, and accessible to the public, and attendees must be provided an opportunity to receive information and provide input regarding the charter school's operations. The appointed representative and charter school principal or director, or his or her designee, must be physically present at each meeting.

(10) ELIGIBLE STUDENTS.—

(d) A charter school may give enrollment preference to the

927682

following student populations:

1. Students who are siblings of a student enrolled in the charter school.

2. Students who are the children of a member of the governing board of the charter school.

3. Students who are the children of an employee of the charter school.

4. Students who are the children of:

a. An employee of the business partner of a charter school-in-the-workplace established under paragraph (15)(b) or a resident of the municipality in which such charter school is located; or

b. A resident of a municipality that operates a charter school-in-a-municipality pursuant to paragraph (15)(c).

5. Students who have successfully completed a voluntary prekindergarten education program under ss. 1002.51-1002.79 provided by the charter school or the charter school's governing board during the previous year.

6. Students who are the children of an active duty member of any branch of the United States Armed Forces.

7. Students who attended or are assigned to failing schools pursuant to s. 1002.38(2).

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(b) The basis for the agreement for funding students enrolled in a charter school shall be the sum of the school

852 district's operating funds from the Florida Education Finance
853 Program as provided in s. 1011.62 and the General Appropriations
854 Act, including gross state and local funds, discretionary
855 lottery funds, and funds from the school district's current
856 operating discretionary millage levy; divided by total funded
857 weighted full-time equivalent students in the school district;
858 multiplied by the weighted full-time equivalent students for the
859 charter school. Charter schools whose students or programs meet
860 the eligibility criteria in law are entitled to their
861 proportionate share of categorical program funds included in the
862 total funds available in the Florida Education Finance Program
863 by the Legislature, including transportation, the research-based
864 reading allocation, and the Florida digital classrooms
865 allocation. Total funding for each charter school shall be
866 recalculated during the year to reflect the revised calculations
867 under the Florida Education Finance Program by the state and the
868 actual weighted full-time equivalent students reported by the
869 charter school during the full-time equivalent student survey
870 periods designated by the Commissioner of Education.
871 (20) SERVICES.—
872 (a)1. A sponsor shall provide certain administrative and
873 educational services to charter schools. These services shall
874 include contract management services; full-time equivalent and
875 data reporting services; exceptional student education
876 administration services; services related to eligibility and
877 reporting duties required to ensure that school lunch services
878 under the federal lunch program, consistent with the needs of
879 the charter school, are provided by the school district at the
880 request of the charter school, that any funds due to the charter


927682

school under the federal lunch program be paid to the charter school as soon as the charter school begins serving food under the federal lunch program, and that the charter school is paid at the same time and in the same manner under the federal lunch program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to student information systems that are used by public schools in the district in which the charter school is located. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district.

2. A total administrative fee for the provision of such services shall be calculated based upon up to 5 percent of the available funds defined in paragraph (17)(b) for all students, except that when 75 percent or more of the students enrolled in the charter school are exceptional students as defined in s. 1003.01(3), the 5 percent of those available funds shall be calculated based on unweighted full-time equivalent students. However, a sponsor may only withhold up to a 5-percent administrative fee for enrollment for up to and including 250 students. For charter schools with a population of 251 or more students, the difference between the total administrative fee calculation and the amount of the administrative fee withheld


927682

may only be used for capital outlay purposes specified in s. 1013.62(2).

3. For high-performing charter schools, as defined in s. 1002.331 ~~ch. 2011-232~~, a sponsor may withhold a total administrative fee of up to 2 percent for enrollment up to and including 250 students per school.

4. In addition, a sponsor may withhold only up to a 5-percent administrative fee for enrollment for up to and including 500 students within a system of charter schools which meets all of the following:

a. Includes both conversion charter schools and nonconversion charter schools;

b. Has all schools located in the same county;

c. Has a total enrollment exceeding the total enrollment of at least one school district in the state;

d. Has the same governing board; and

e. Does not contract with a for-profit service provider for management of school operations.

5. The difference between the total administrative fee calculation and the amount of the administrative fee withheld pursuant to subparagraph 4. may be used for instructional and administrative purposes as well as for capital outlay purposes specified in s. 1013.62(2).

6. For a high-performing charter school system that also meets the requirements in subparagraph 4., a sponsor may withhold a 2-percent administrative fee for enrollments up to and including 500 students per system.

7. Sponsors shall not charge charter schools any additional fees or surcharges for administrative and educational services


927682

in addition to the maximum 5-percent administrative fee withheld pursuant to this paragraph.

8. The sponsor of a virtual charter school may withhold a fee of up to 5 percent. The funds shall be used to cover the cost of services provided under subparagraph 1. and implementation of the school district's digital classrooms plan pursuant to s. 1011.62.

Section 6. Paragraph (a) of subsection (3) of section 1002.37, Florida Statutes, is amended to read:

1002.37 The Florida Virtual School.—

(3) Funding for the Florida Virtual School shall be provided as follows:

(a)1. The calculation of "full-time equivalent student" shall be as prescribed in s. 1011.61(1)(c)1.b.(V) and is subject to s. 1011.61(4) ~~For a student in grades 9 through 12, a "full-time equivalent student" is one student who has successfully completed six full-credit courses that count toward the minimum number of credits required for high school graduation. A student who completes fewer than six full-credit courses is a fraction of a full-time equivalent student. Half-credit course completions shall be included in determining a full-time equivalent student.~~

~~2. For a student in kindergarten through grade 8, a "full-time equivalent student" is one student who has successfully completed six courses or the prescribed level of content that counts toward promotion to the next grade. A student who completes fewer than six courses or the prescribed level of content shall be a fraction of a full-time equivalent student.~~

2.~~3.~~ For a student in a home education program, funding

927682

shall be provided in accordance with this subsection upon course completion if the parent verifies, upon enrollment for each course, that the student is registered with the school district as a home education student pursuant to s. 1002.41(1)(a). ~~Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for home education program students who choose not to take an end-of-course assessment or for a student who enrolls in a segmented remedial course delivered online.~~

~~For purposes of this paragraph, the calculation of "full-time equivalent student" shall be as prescribed in s. 1011.61(1)(c)1.b.(V) and is subject to the requirements in s. 1011.61(4).~~

Section 7. Paragraph (c) of subsection (7) and paragraphs (c) and (d) of subsection (8) of section 1002.45, Florida Statutes, are amended to read:

1002.45 Virtual instruction programs.—

(7) VIRTUAL INSTRUCTION PROGRAM AND VIRTUAL CHARTER SCHOOL FUNDING.—

~~(c) Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-~~


927682

~~of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course delivered online.~~

(8) ASSESSMENT AND ACCOUNTABILITY.—

(c) An approved provider that receives a school grade of "D" or "F" under s. 1008.34 or a school improvement rating of "Unsatisfactory" ~~"Declining"~~ under s. 1008.341 must file a school improvement plan with the department for consultation to determine the causes for low performance and to develop a plan for correction and improvement.

(d) An approved provider's contract must be terminated if the provider receives a school grade of "D" or "F" under s. 1008.34 or a school improvement rating of "Unsatisfactory" ~~"Declining"~~ under s. 1008.341 for 2 years during any consecutive 4-year period or has violated any qualification requirement pursuant to subsection (2). A provider that has a contract terminated under this paragraph may not be an approved provider for a period of at least 1 year after the date upon which the contract was terminated and until the department determines that the provider is in compliance with subsection (2) and has corrected each cause of the provider's low performance.

Section 8. Section 1003.3101, Florida Statutes, is created to read:

1003.3101 Additional educational choice options.—Each school district board shall establish a transfer process for a parent to request his or her child be transferred to another classroom teacher. This section does not give a parent the right to choose a specific classroom teacher. A school must approve or deny the transfer within 2 weeks after receiving a request. If a


927682

request for transfer is denied, the school must notify the parent and specify the reasons for the denial. An explanation of the transfer process must be made available in the student handbook or a similar publication.

Section 9. Subsection (3) of section 1003.4295, Florida Statutes, is amended to read:

1003.4295 Acceleration options.—

(3) The Credit Acceleration Program (CAP) is created for the purpose of allowing a student to earn high school credit in courses required for high school graduation through passage of an end-of-course assessment ~~Algebra I, Algebra II, geometry, United States history, or biology if the student passes the statewide, standardized assessment~~ administered under s. 1008.22, an Advanced Placement Examination, or a College Level Examination Program (CLEP). Notwithstanding s. 1003.436, a school district shall award course credit to a student who is not enrolled in the course, or who has not completed the course, if the student attains a passing score on the corresponding end-of-course assessment, Advanced Placement Examination, or CLEP ~~statewide, standardized assessment~~. The school district shall permit a public school or home education student who is not enrolled in the course, or who has not completed the course, to take the assessment or examination during the regular administration of the assessment or examination.

Section 10. Effective June 29, 2016, section 1004.935, Florida Statutes, is amended to read:

1004.935 Adults with Disabilities Workforce Education ~~Pilot~~ Program.—

(1) The Adults with Disabilities Workforce Education ~~Pilot~~

927682

Program is established in the Department of Education ~~through June 30, 2016,~~ in Hardee, DeSoto, Manatee, and Sarasota Counties to provide the option of receiving a scholarship for instruction at private schools for up to 30 students who:

(a) Have a disability;

(b) Are 22 years of age;

(c) Are receiving instruction from an instructor in a private school to meet the high school graduation requirements in s. 1002.3105(5) or s. 1003.4282;

(d) Do not have a standard high school diploma or a special high school diploma; and

(e) Receive "supported employment services," which means employment that is located or provided in an integrated work setting with earnings paid on a commensurate wage basis and for which continued support is needed for job maintenance.

As used in this section, the term "student with a disability" includes a student who is documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.

(2) A student participating in the ~~pilot~~ program may continue to participate in the program until the student graduates from high school or reaches the age of 40 years,


927682

whichever occurs first.

(3) Supported employment services may be provided at more than one site.

(4) The provider of supported employment services must be a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code which serves Hardee County, DeSoto County, Manatee County, or Sarasota County and must contract with a private school in this state which meets the requirements in subsection (5).

(5) A private school that participates in the ~~pilot~~ program may be sectarian or nonsectarian and must:

(a) Be academically accountable for meeting the educational needs of the student by annually providing to the provider of supported employment services a written explanation of the student's progress.

(b) Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.

(c) Meet state and local health and safety laws and codes.

(d) Provide to the provider of supported employment services all documentation required for a student's participation, including the private school's and student's fee schedules, at least 30 days before any quarterly scholarship payment is made for the student. A student is not eligible to receive a quarterly scholarship payment if the private school fails to meet this deadline.

The inability of a private school to meet the requirements of this subsection constitutes a basis for the ineligibility of the private school to participate in the ~~pilot~~ program.

(6)(a) If the student chooses to participate in the ~~pilot~~

program and is accepted by the provider of supported employment services, the student must notify the Department of Education of his or her acceptance into the program 60 days before the first scholarship payment and before participating in the ~~pilot~~ program in order to be eligible for the scholarship.

(b) Upon receipt of a scholarship warrant, the student or parent to whom the warrant is made must restrictively endorse the warrant to the provider of supported employment services for deposit into the account of the provider. The student or parent may not designate any entity or individual associated with the participating provider of supported employment services as the student's or parent's attorney in fact to endorse a scholarship warrant. A participant who fails to comply with this paragraph forfeits the scholarship.

(7) Funds for the scholarship shall be provided from the appropriation from the school district's Workforce Development Fund in the General Appropriations Act for students who reside in the Hardee County School District, the DeSoto County School District, the Manatee County School District, or the Sarasota County School District. ~~During the pilot program,~~ The scholarship amount granted for an eligible student with a disability shall be equal to the cost per unit of a full-time equivalent adult general education student, multiplied by the adult general education funding factor, and multiplied by the district cost differential pursuant to the formula required by s. 1011.80(6)(a) for the district in which the student resides.

(8) Upon notification by the Department of Education that it has received the required documentation, the Chief Financial Officer shall make scholarship payments in four equal amounts no

927682

later than September 1, November 1, February 1, and April 1 of each academic year in which the scholarship is in force. The initial payment shall be made after the Department of Education verifies that the student was accepted into the ~~pilot~~ program, and subsequent payments shall be made upon verification of continued participation in the ~~pilot~~ program. Payment must be by individual warrant made payable to the student or parent and mailed by the Department of Education to the provider of supported employment services, and the student or parent shall restrictively endorse the warrant to the provider of supported employment services for deposit into the account of that provider.

(9) Subsequent to each scholarship payment, the Department of Education shall request from the Department of Financial Services a sample of endorsed warrants to review and confirm compliance with endorsement requirements.

Section 11. Subsection (3) and paragraph (a) of subsection (8) of section 1006.15, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student activities; regulation.—

(3)(a) As used in this section and s. 1006.20, the term "eligible to participate" includes, but is not limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests. The term does not mean that a student must be placed on any specific team for interscholastic or intrascholastic extracurricular activities. To be eligible to participate in

927682

interscholastic extracurricular student activities, a student must:

1. Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) or s. 1003.4282.

2. Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student's parents, if the student's cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1002.3105(5) or s. 1003.4282. At a minimum, the contract must require that the student attend summer school, or its graded equivalent, between grades 9 and 10 or grades 10 and 11, as necessary.

3. Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) or s. 1003.4282 during his or her junior or senior year.

4. Maintain satisfactory conduct, including adherence to appropriate dress and other codes of student conduct policies described in s. 1006.07(2). If a student is convicted of, or is found to have committed, a felony or a delinquent act that would have been a felony if committed by an adult, regardless of whether adjudication is withheld, the student's participation in interscholastic extracurricular activities is contingent upon established and published district school board policy.

(b) Any student who is exempt from attending a full school


927682

day based on rules adopted by the district school board for double session schools or programs, experimental schools, or schools operating under emergency conditions must maintain the grade point average required by this section and pass each class for which he or she is enrolled.

(c) An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend ~~pursuant to district or interdistrict controlled open enrollment provisions~~, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s. 1002.41.

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal which may include: review of the student’s work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a Florida College System institution, university, or trade school; standardized test scores above the 35th percentile; or any other method designated in s. 1002.41.

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards

of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A home education student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

(d) An individual charter school student pursuant to s. 1002.33 is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend, ~~pursuant to district or interdistrict controlled open-enrollment provisions,~~ in any interscholastic extracurricular activity of that school, unless such activity is provided by the


927682

student's charter school, if the following conditions are met:

1. The charter school student must meet the requirements of the charter school education program as determined by the charter school governing board.

2. During the period of participation at a school, the charter school student must demonstrate educational progress as required in paragraph (b).

3. The charter school student must meet the same residency requirements as other students in the school at which he or she participates.

4. The charter school student must meet the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. The charter school student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A charter school student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a charter school program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in


927682

interscholastic extracurricular activities is ineligible to participate in such activities as a charter school student until the student has successfully completed one grading period in a charter school pursuant to subparagraph 2. to become eligible to participate as a charter school student.

(e) A student of the Florida Virtual School full-time program may participate in any interscholastic extracurricular activity at the public school to which the student would be assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend, ~~pursuant to district or interdistrict controlled open enrollment policies,~~ if the student:

1. During the period of participation in the interscholastic extracurricular activity, meets the requirements in paragraph (a).

2. Meets any additional requirements as determined by the board of trustees of the Florida Virtual School.

3. Meets the same residency requirements as other students in the school at which he or she participates.

4. Meets the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. Registers his or her intent to participate in interscholastic extracurricular activities with the school before the beginning date of the season for the activity in which he or she wishes to participate. A Florida Virtual School student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

(f) A student who transfers from the Florida Virtual School

927682

full-time program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if the student has a successful evaluation from the previous school year pursuant to paragraph (a).

(g) A public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a Florida Virtual School student until the student successfully completes one grading period in the Florida Virtual School pursuant to paragraph (a).

(h)1. A school district or charter school may not delay eligibility or otherwise prevent a student participating in controlled open enrollment, or a choice program, from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities.

2. A student participating in a sport at a school may not participate in that same sport at another school during that school year, unless the student meets one of the following criteria:

a. Dependent children of active duty military personnel whose move resulted from military orders.

b. Children who have been relocated due to a foster care placement in a different school zone.

c. Children who move due to a court ordered change in custody due to separation or divorce, or the serious illness or death of a custodial parent.

d. Authorized for good cause in district or charter school


927682

policy.

(8)(a) The Florida High School Athletic Association (FHSAA), in cooperation with each district school board, shall facilitate a program in which a middle school or high school student who attends a private school shall be eligible to participate in an interscholastic or intrascholastic sport at a public high school, a public middle school, or a 6-12 public school that is zoned for the physical address at which the student resides if:

1. The private school in which the student is enrolled is not a member of the FHSAA ~~and does not offer an interscholastic or intrascholastic athletic program~~.

2. The private school student meets the guidelines for the conduct of the program established by the FHSAA's board of directors and the district school board. At a minimum, such guidelines shall provide:

a. A deadline for each sport by which the private school student's parents must register with the public school in writing their intent for their child to participate at that school in the sport.

b. Requirements for a private school student to participate, including, but not limited to, meeting the same standards of eligibility, acceptance, behavior, educational progress, and performance which apply to other students participating in interscholastic or intrascholastic sports at a public school or FHSAA member private school.

(9)(a) A student who transfers to a school during the school year may seek to immediately join an existing team if the roster for the specific interscholastic or intrascholastic

927682

extracurricular activity has not reached the activity's identified maximum size and if the coach for the activity determines that the student has the requisite skill and ability to participate. The FHSAA and school district or charter school may not declare such a student ineligible because the student did not have the opportunity to comply with qualifying requirements.

(b) A student participating in a sport at a school may not participate in that same sport at another school during that school year, unless the student meets one of the following criteria:

1. Dependent children of active duty military personnel whose move resulted from military orders.

2. Children who have been relocated due to a foster care placement in a different school zone.

3. Children who move due to a court ordered change in custody due to separation or divorce, or the serious illness or death of a custodial parent.

4. Authorized for good cause in district or charter school policy.

Section 12. Subsection (1) and paragraphs (a), (b), (c), and (g) of subsection (2) of section 1006.20, Florida Statutes, are amended to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit

927682

organization to govern athletics with the approval of the State Board of Education. The FHSAA is not a state agency as defined in s. 120.52. The FHSAA shall be subject to the provisions of s. 1006.19. A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA. Any high school in the state, including charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. However, membership in the FHSAA is not mandatory for any school. The FHSAA must allow a private school the option of maintaining full membership in the association or joining by sport and may not discourage a private school from simultaneously maintaining membership in another athletic association. The FHSAA may allow a public school the option to apply for consideration to join another athletic association. The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization, and may not take any retributory or discriminatory action against any of its member schools that participate in interscholastic competition with non-FHSAA member Florida schools. The FHSAA may not unreasonably withhold its approval of an application to become an affiliate member of the National Federation of State High School Associations submitted by any other organization that governs interscholastic athletic competition in this state. The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by


927682

statute. For the purposes of this section, "high school" includes grades 6 through 12.

(2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

(a) The FHSAA shall adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools. The bylaws governing residence and transfer shall allow the student to be immediately eligible in the school in which he or she first enrolls each school year or the school in which the student makes himself or herself a candidate for an athletic team by engaging in a practice prior to enrolling in the school. The bylaws shall also allow the student to be immediately eligible in the school to which the student has transferred ~~during the school year if the transfer is made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport. These transfers shall be allowed pursuant to the district school board policies in the case of transfer to a public school or pursuant to the private school policies in the case of transfer to a private school~~. The student shall be eligible in that school so long as he or she remains enrolled in that school. Subsequent eligibility shall be determined and enforced through the FHSAA's bylaws. Requirements governing eligibility and transfer between member schools shall be applied similarly to public school students and private school students.

(b) The FHSAA shall adopt bylaws that specifically prohibit the recruiting of students for athletic purposes. The bylaws shall prescribe penalties and an appeals process for athletic recruiting violations.

927682

1. If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle, in addition to the penalties in subparagraphs 2. and 3., and any other appropriate fine or ~~and~~ sanction imposed on the school, its coaches, or adult representatives who violate recruiting rules.

2. Any recruitment by a school district employee or contractor in violation of FHSAA bylaws results in escalating punishments as follows:

a. For a first offense, a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation.

b. For a second offense, suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation.

c. For a third offense, a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation. If the individual who committed the violation holds an educator certificate, the FHSAA shall also refer the violation to the department for review pursuant to s. 1012.796 to determine whether probable cause exists, and, if there is a finding of probable cause, the commissioner shall file a formal complaint against the individual. If the complaint is upheld, the individual’s educator certificate shall be revoked for 3 years, in addition to any penalties available under s. 1012.796.

927682

Additionally, the department shall revoke any adjunct teaching certificates issued pursuant to s. 1012.57 and all permissions under ss. 1012.39 and 1012.43, and the educator is ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

3. Notwithstanding any other provision of law, a school shall forfeit every competition in which a student participated who was recruited by an adult who is not a school district employee or contractor in violation of FHSAA bylaws.

4. A student may not be declared ineligible based on violation of recruiting rules unless the student or parent has falsified any enrollment or eligibility document or accepted any benefit ~~or any promise of benefit~~ if such benefit is not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.

(c) The FHSAA shall adopt bylaws that require all students participating in interscholastic athletic competition or who are candidates for an interscholastic athletic team to satisfactorily pass a medical evaluation each year prior to participating in interscholastic athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team. Such medical evaluation may be administered only by a practitioner licensed under chapter 458, chapter 459, chapter 460, or s. 464.012, and in good standing with the practitioner's regulatory board. The bylaws shall establish requirements for eliciting a student's medical history


927682

and performing the medical evaluation required under this paragraph, which shall include a physical assessment of the student's physical capabilities to participate in interscholastic athletic competition as contained in a uniform preparticipation physical evaluation and history form. The evaluation form shall incorporate the recommendations of the American Heart Association for participation cardiovascular screening and shall provide a place for the signature of the practitioner performing the evaluation with an attestation that each examination procedure listed on the form was performed by the practitioner or by someone under the direct supervision of the practitioner. The form shall also contain a place for the practitioner to indicate if a referral to another practitioner was made in lieu of completion of a certain examination procedure. The form shall provide a place for the practitioner to whom the student was referred to complete the remaining sections and attest to that portion of the examination. The preparticipation physical evaluation form shall advise students to complete a cardiovascular assessment and shall include information concerning alternative cardiovascular evaluation and diagnostic tests. Results of such medical evaluation must be provided to the school. A student is not ~~No student shall be~~ eligible to participate, as provided in s. 1006.15(3), in any interscholastic athletic competition or engage in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team until the results of the medical evaluation have been received and approved by the school.

(g) The FHSAA shall adopt bylaws establishing the process

927682

and standards by which FHSAA determinations of eligibility are made. Such bylaws shall provide that:

1. Ineligibility must be established by a preponderance of the ~~clear and convincing~~ evidence;

2. Student athletes, parents, and schools must have notice of the initiation of any investigation or other inquiry into eligibility and may present, to the investigator and to the individual making the eligibility determination, any information or evidence that is credible, persuasive, and of a kind reasonably prudent persons rely upon in the conduct of serious affairs;

3. An investigator may not determine matters of eligibility but must submit information and evidence to the executive director or a person designated by the executive director or by the board of directors for an unbiased and objective determination of eligibility; and

4. A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.

Section 13. Subsection (1) of section 1011.61, Florida Statutes, is amended to read:

1011.61 Definitions.—Notwithstanding the provisions of s. 1000.21, the following terms are defined as follows for the purposes of the Florida Education Finance Program:

(1) A "full-time equivalent student" in each program of the district is defined in terms of full-time students and part-time students as follows:

(a) A "full-time student" is one student on the membership roll of one school program or a combination of school programs

927682

listed in s. 1011.62(1)(c) for the school year or the equivalent for:

1. Instruction in a standard school, comprising not less than 900 net hours for a student in or at the grade level of 4 through 12, or not less than 720 net hours for a student in or at the grade level of kindergarten through grade 3 or in an authorized prekindergarten exceptional program; or

~~2. Instruction in a double-session school or a school utilizing an experimental school calendar approved by the Department of Education, comprising not less than the equivalent of 810 net hours in grades 4 through 12 or not less than 630 net hours in kindergarten through grade 3; or~~

2.~~3.~~ Instruction comprising the appropriate number of net hours set forth in subparagraph 1. ~~or subparagraph 2.~~ for students who, within the past year, have moved with their parents for the purpose of engaging in the farm labor or fish industries, if a plan furnishing such an extended school day or week, or a combination thereof, has been approved by the commissioner. Such plan may be approved to accommodate the needs of migrant students only or may serve all students in schools having a high percentage of migrant students. The plan described in this subparagraph is optional for any school district and is not mandated by the state.

(b) A "part-time student" is a student on the active membership roll of a school program or combination of school programs listed in s. 1011.62(1)(c) who is less than a full-time student. A student who receives instruction in a school that operates for less than the minimum term shall generate full-time equivalent student membership proportional to the amount of


927682

instructional hours provided by the school divided by the minimum term requirement as provided in s. 1011.60(2).

(c)1. A "full-time equivalent student" is:

a. A full-time student in any one of the programs listed in s. 1011.62(1)(c); or

b. A combination of full-time or part-time students in any one of the programs listed in s. 1011.62(1)(c) which is the equivalent of one full-time student based on the following calculations:

(I) A full-time student in a combination of programs listed in s. 1011.62(1)(c) shall be a fraction of a full-time equivalent membership in each special program equal to the number of net hours per school year for which he or she is a member, divided by the appropriate number of hours set forth in subparagraph (a)1. ~~or subparagraph (a)2~~. The difference between that fraction or sum of fractions and the maximum value as set forth in subsection (4) for each full-time student is presumed to be the balance of the student's time not spent in a special program and shall be recorded as time in the appropriate basic program.

(II) A prekindergarten student with a disability shall meet the requirements specified for kindergarten students.

(III) A full-time equivalent student for students in kindergarten through grade 12 in a full-time virtual instruction program under s. 1002.45 or a virtual charter school under s. 1002.33 shall consist of six full-credit completions or the prescribed level of content that counts toward promotion to the next grade in programs listed in s. 1011.62(1)(c). Credit completions may be a combination of full-credit courses or half-


927682

credit courses. ~~Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course delivered online.~~

(IV) A full-time equivalent student for students in kindergarten through grade 12 in a part-time virtual instruction program under s. 1002.45 shall consist of six full-credit completions in programs listed in s. 1011.62(1)(c)1. and 3. Credit completions may be a combination of full-credit courses or half-credit courses. ~~Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course delivered online.~~

(V) A Florida Virtual School full-time equivalent student shall consist of six full-credit completions or the prescribed level of content that counts toward promotion to the next grade in the programs listed in s. 1011.62(1)(c)1. and 3. for students participating in kindergarten through grade 12 part-time virtual instruction and the programs listed in s. 1011.62(1)(c) for students participating in kindergarten through grade 12 full-time virtual instruction. Credit completions may be a


927682

combination of full-credit courses or half-credit courses. ~~Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course delivered online.~~

(VI) Each successfully completed full-credit course earned through an online course delivered by a district other than the one in which the student resides shall be calculated as 1/6 FTE.

(VII) A full-time equivalent student for courses requiring passage of a statewide, standardized end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be defined and reported based on the number of instructional hours as provided in this subsection ~~until the 2016-2017 fiscal year~~. ~~Beginning in the 2016-2017 fiscal year, the FTE for the course shall be assessment-based and shall be equal to 1/6 FTE. The reported FTE shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course delivered online.~~

(VIII) For students enrolled in a school district as a full-time student, the district may report 1/6 FTE for each student who passes a statewide, standardized end-of-course assessment without being enrolled in the corresponding course.

2. A student in membership in a program scheduled for more or less than 180 school days or the equivalent on an hourly basis as specified by rules of the State Board of Education is a

fraction of a full-time equivalent membership equal to the number of instructional hours in membership divided by the appropriate number of hours set forth in subparagraph (a)1.; however, for the purposes of this subparagraph, membership in programs scheduled for more than 180 days is limited to students enrolled in:

a. Juvenile justice education programs.

b. The Florida Virtual School.

c. Virtual instruction programs and virtual charter schools for the purpose of course completion and credit recovery pursuant to ss. 1002.45 and 1003.498. Course completion applies only to a student who is reported during the second or third membership surveys and who does not complete a virtual education course by the end of the regular school year. The course must be completed no later than the deadline for amending the final student enrollment survey for that year. Credit recovery applies only to a student who has unsuccessfully completed a traditional or virtual education course during the regular school year and must re-take the course in order to be eligible to graduate with the student’s class.

The full-time equivalent student enrollment calculated under this subsection is subject to the requirements in subsection (4).

The department shall determine and implement an equitable method of equivalent funding for ~~experimental schools and for~~ schools operating under emergency conditions, which schools have been approved by the department to operate for less than the minimum

927682

term as provided in s. 1011.60(2) ~~school day~~.

Section 14. Effective July 1, 2016, and upon the expiration of the amendment to section 1011.62, Florida Statutes, made by chapter 2015-222, Laws of Florida, paragraphs (e) and (o) of subsection (1), paragraph (a) of subsection (4), and present subsection (13) of that section are amended, present subsections (13), (14), and (15) of that section are redesignated as subsections (14), (15), and (16), respectively, and a new subsection (13) is added to that section, 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 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

927682

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.

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 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)(l) and rules of the State Board of Education, which shall be allocated initially ~~annually~~ to each school district in the amount provided in the General Appropriations Act. These funds shall be supplemental ~~in~~


927682

~~addition~~ to the funds appropriated for the basic funding level ~~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 once during the year, based on actual student membership from the October FTE survey. Upon recalculation, if the generated allocation is greater than the amount provided in the General Appropriations Act, the total shall be prorated to the level of the appropriation based on each district's share of the total recalculated amount. 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.

(o) Calculation of additional full-time equivalent membership based on successful completion of a career-themed course pursuant to ss. 1003.491, 1003.492, and 1003.493, or courses with embedded CAPE industry certifications or CAPE Digital Tool certificates, and issuance of industry certification identified on the CAPE Industry Certification Funding List pursuant to rules adopted by the State Board of Education or CAPE Digital Tool certificates pursuant to s. 1003.4203.—

1.a. A value of 0.025 full-time equivalent student membership shall be calculated for CAPE Digital Tool certificates earned by students in elementary and middle school grades.


927682

b. A value of 0.1 or 0.2 full-time equivalent student membership shall be calculated for each student who completes a course as defined in s. 1003.493(1)(b) or courses with embedded CAPE industry certifications and who is issued an industry certification identified annually on the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education. A value of 0.2 full-time equivalent membership shall be calculated for each student who is issued a CAPE industry certification that has a statewide articulation agreement for college credit approved by the State Board of Education. For CAPE industry certifications that do not articulate for college credit, the Department of Education shall assign a full-time equivalent value of 0.1 for each certification. Middle grades students who earn additional FTE membership for a CAPE Digital Tool certificate pursuant to sub-subparagraph a. may not use the previously funded examination to satisfy the requirements for earning an industry certification under this sub-subparagraph. Additional FTE membership for an elementary or middle grades student may ~~shall~~ not exceed 0.1 for certificates or certifications earned within the same fiscal year. The State Board of Education shall include the assigned values on the CAPE Industry Certification Funding List under rules adopted by the state board. Such value shall be added to the total full-time equivalent student membership for grades 6 through 12 in the subsequent year ~~for courses that were not provided through dual enrollment~~. CAPE industry certifications earned through dual enrollment must be reported and funded pursuant to s. 1011.80. However, if a student earns a certification through a dual enrollment course and the


927682

certification is not a fundable certification on the postsecondary certification funding list, or the dual enrollment certification is earned as a result of an agreement between a school district and a nonpublic postsecondary institution, the bonus value shall be funded in the same manner as other nondual enrollment course industry certifications. In such cases, the school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

c. A value of 0.3 full-time equivalent student membership shall be calculated for student completion of the courses and the embedded certifications identified on the CAPE Industry Certification Funding List and approved by the commissioner pursuant to ss. 1003.4203(5)(a) and 1008.44.

d. A value of 0.5 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 15 to 29 college credit hours, and 1.0 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 30 or more college credit hours pursuant to CAPE Acceleration Industry Certifications approved by the commissioner pursuant to ss. 1003.4203(5)(b) and 1008.44.

2. Each district must allocate at least 80 percent of the funds provided for CAPE industry certification, in accordance with this paragraph, to the program that generated the funds. This allocation may not be used to supplant funds provided for basic operation of the program.

3. For CAPE industry certifications earned in the 2013-2014

927682

school year and in subsequent years, the school district shall distribute to each classroom teacher who provided direct instruction toward the attainment of a CAPE industry certification that qualified for additional full-time equivalent membership under subparagraph 1.:

a. A bonus ~~in the amount~~ of $25 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.

b. A bonus ~~in the amount~~ of $50 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2~~, 0.3, 0.5, and 1.0~~.

c. A bonus of $75 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3.

d. A bonus of $100 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0.

Bonuses awarded pursuant to this paragraph shall be provided to teachers who are employed by the district in the year in which the additional FTE membership calculation is included in the calculation. Bonuses shall be calculated based upon the associated weight of a CAPE industry certification on the CAPE Industry Certification Funding List for the year in which the

certification is earned by the student. Any bonus awarded to a teacher under this paragraph ~~may not exceed $2,000 in any given school year and~~ is in addition to any regular wage or other bonus the teacher received or is scheduled to receive.

(4) COMPUTATION OF DISTRICT REQUIRED LOCAL EFFORT.—The Legislature shall prescribe the aggregate required local effort for all school districts collectively as an item in the General Appropriations Act for each fiscal year. The amount that each district shall provide annually toward the cost of the Florida Education Finance Program for kindergarten through grade 12 programs shall be calculated as follows:

(a) Estimated taxable value calculations.—

1.a. Not later than 2 working days before ~~prior to~~ July 19, the Department of Revenue shall certify to the Commissioner of Education its most recent estimate of the taxable value for school purposes in each school district and the total for all school districts in the state for the current calendar year based on the latest available data obtained from the local property appraisers. The value certified shall be the taxable value for school purposes for that year, and no further adjustments shall be made, except those made pursuant to paragraphs (c) and (d), or an assessment roll change required by final judicial decisions as specified in paragraph (15)(b) ~~(14)(b)~~. Not later than July 19, the Commissioner of Education shall compute a millage rate, rounded to the next highest one one-thousandth of a mill, which, when applied to 96 percent of the estimated state total taxable value for school purposes, would generate the prescribed aggregate required local effort for that year for all districts. The Commissioner of Education


927682

shall certify to each district school board the millage rate, computed as prescribed in this subparagraph, as the minimum millage rate necessary to provide the district required local effort for that year.

b. The General Appropriations Act shall direct the computation of the statewide adjusted aggregate amount for required local effort for all school districts collectively from ad valorem taxes to ensure that no school district's revenue from required local effort millage will produce more than 90 percent of the district's total Florida Education Finance Program calculation as calculated and adopted by the Legislature, and the adjustment of the required local effort millage rate of each district that produces more than 90 percent of its total Florida Education Finance Program entitlement to a level that will produce only 90 percent of its total Florida Education Finance Program entitlement in the July calculation.

2. On the same date as the certification in sub-subparagraph 1.a., the Department of Revenue shall certify to the Commissioner of Education for each district:

a. Each year for which the property appraiser has certified the taxable value pursuant to s. 193.122(2) or (3), if applicable, since the prior certification under sub-subparagraph 1.a.

b. For each year identified in sub-subparagraph a., the taxable value certified by the appraiser pursuant to s. 193.122(2) or (3), if applicable, since the prior certification under sub-subparagraph 1.a. This is the certification that reflects all final administrative actions of the value adjustment board.

927682

(13) FEDERALLY CONNECTED STUDENT SUPPLEMENT.—The federally connected student supplement is created to provide supplemental funding for school districts to support the education of students connected with federally owned military installations, National Aeronautics and Space Administration (NASA) real property, and Indian lands. To be eligible for this supplement, the district must be eligible for federal Impact Aid Program funds under s. 8003 of Title VIII of the Elementary and Secondary Education Act of 1965. The supplement shall be allocated annually to each eligible school district in the amount provided in the General Appropriations Act. The supplement shall be the sum of the student allocation and an exempt property allocation.

(a) The student allocation shall be calculated based on the number of students reported for federal Impact Aid Program funds, including students with disabilities, who meet one of the following criteria:

1. The student has a parent who is on active duty in the uniformed services or is an accredited foreign government official and military officer. Students with disabilities shall also be reported separately for this category.

2. The student resides on eligible federally owned Indian land. Students with disabilities shall also be reported separately for this category.

3. The student resides with a civilian parent who lives or works on eligible federal property connected with a military installation or NASA. The number of these students shall be multiplied by a factor of 0.5.

(b) The total number of federally connected students

927682

calculated under paragraph (a) shall be multiplied by a percentage of the base student allocation as provided in the General Appropriations Act. The total of the number of students with disabilities as reported separately under subparagraphs (a)1. and (a)2. shall be multiplied by an additional percentage of the base student allocation as provided in the General Appropriations Act. The base amount and the amount for students with disabilities shall be summed to provide the student allocation.

(c) The exempt property allocation shall be equal to the tax-exempt value of federal impact aid lands reserved as military installations, real property owned by NASA, or eligible federally owned Indian lands located in the district, as of January 1 of the previous year, multiplied by the millage authorized and levied under s. 1011.71(2).

(14) ~~(13)~~ QUALITY ASSURANCE GUARANTEE.—The Legislature may annually in the General Appropriations Act determine a percentage increase in funds per K-12 unweighted FTE as a minimum guarantee to each school district. The guarantee shall be calculated from prior year base funding per unweighted FTE student which shall include the adjusted FTE dollars as provided in subsection (15) ~~(14)~~, quality guarantee funds, and actual nonvoted discretionary local effort from taxes. From the base funding per unweighted FTE, the increase shall be calculated for the current year. The current year funds from which the guarantee shall be determined shall include the adjusted FTE dollars as provided in subsection (15) ~~(14)~~ and potential nonvoted discretionary local effort from taxes. A comparison of current year funds per unweighted FTE to prior year funds per


927682

unweighted FTE shall be computed. For those school districts which have less than the legislatively assigned percentage increase, funds shall be provided to guarantee the assigned percentage increase in funds per unweighted FTE student. Should appropriated funds be less than the sum of this calculated amount for all districts, the commissioner shall prorate each district's allocation. This provision shall be implemented to the extent specifically funded.

Section 15. Effective July 1, 2016, and upon the expiration of the amendment to section 1011.71, Florida Statutes, made by chapter 2015-222, Laws of Florida, subsection (1) of that section is amended to read:

1011.71 District school tax.—

(1) If the district school tax is not provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, each district school board desiring to participate in the state allocation of funds for current operation as prescribed by s. 1011.62(15) ~~s. 1011.62(14)~~ shall levy on the taxable value for school purposes of the district, exclusive of millage voted under ~~the provisions of~~ s. 9(b) or s. 12, Art. VII of the State Constitution, a millage rate not to exceed the amount certified by the commissioner as the minimum millage rate necessary to provide the district required local effort for the current year, pursuant to s. 1011.62(4)(a)1. In addition to the required local effort millage levy, each district school board may levy a nonvoted current operating discretionary millage. The Legislature shall prescribe annually in the appropriations act the maximum amount of millage a district may levy.

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Section 16. Subsection (2) of section 1012.42, Florida Statutes, is amended to read:

1012.42 Teacher teaching out-of-field.—

(2) NOTIFICATION REQUIREMENTS.—When a teacher in a district school system is assigned teaching duties in a class dealing with subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise, as determined by district school board policy in the subject area to be taught, the parents of all students in the class shall be notified in writing of such assignment, and each school district shall report out-of-field teachers on the district's website within 30 days before the beginning of each semester. A parent whose student is assigned an out-of-field teacher may request that his or her child be transferred to an in-field classroom teacher within the school and grade in which the student is currently enrolled. The school district must approve or deny the parent's request and transfer the student to a different classroom teacher within a reasonable period of time, not to exceed 2 weeks, if an in-field teacher for that course or grade level is employed by the school and the transfer does not violate maximum class size pursuant to s. 1003.03 and s. 1, Art. IX of the State Constitution. If a request for transfer is denied, the school must notify the parent and specify the reasons for the denial. An explanation of the transfer process must be made available in the student handbook or a similar publication. This subsection does not provide a parent the right to choose a specific teacher.


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Section 17. Paragraph (b) of subsection (8) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(8) PROFESSIONAL DEVELOPMENT CERTIFICATION AND EDUCATION COMPETENCY PROGRAM.—

(b)1. Each school district must and a private school or state-supported ~~state supported~~ public school, including a charter school, ~~or a private school~~ may develop and maintain a system by which members of the instructional staff may demonstrate mastery of professional preparation and education competence as required by law. Each program must be based on classroom application of the Florida Educator Accomplished Practices and instructional performance and, for public schools, must be aligned with the district's or state-supported public school's evaluation system established ~~approved~~ under s. 1012.34, as applicable.

2. The Commissioner of Education shall determine the continued approval of programs implemented under this paragraph, based upon the department's review of performance data. The department shall review the performance data as a part of the periodic review of each school district's professional development system required under s. 1012.98.

Section 18. Section 1012.583, Florida Statutes, is created to read:

1012.583 Continuing education and inservice training for youth suicide awareness and prevention.—

(1) Beginning with the 2016-2017 school year, the Department of Education shall incorporate 2 hours of training in youth suicide awareness and prevention into existing


927682

requirements for continuing education or inservice training for instructional personnel in elementary school, middle school, and high school.

(2) The department, in consultation with the Statewide Office for Suicide Prevention and suicide prevention experts, shall develop a list of approved youth suicide awareness and prevention training materials. The materials:

(a) Must include training on how to identify appropriate mental health services and how to refer youth and their families to those services.

(b) May include materials currently being used by a school district if such materials meet any criteria established by the department.

(c) May include programs that instructional personnel can complete through a self-review of approved youth suicide awareness and prevention materials.

(3) The training required by this section must be included in the existing continuing education or inservice training requirements for instructional personnel and may not add to the total hours currently required by the department.

(4) A person has no cause of action for any loss or damage caused by an act or omission resulting from the implementation of this section or resulting from any training required by this section unless the loss or damage was caused by willful or wanton misconduct. This section does not create any new duty of care or basis of liability.

(5) The State Board of Education may adopt rules to implement this section.

Section 19. Paragraph (o) is added to subsection (1) of

927682

section 1012.795, Florida Statutes, and subsection (5) of that section is amended, to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(5) Each district school superintendent and the governing authority of each university lab school, state-supported school, ~~or~~ private school, and the FHSAA shall report to the department


927682

the name of any person certified pursuant to this chapter or employed and qualified pursuant to s. 1012.39:

(a) Who has been convicted of, or who has pled nolo contendere to, a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;

(b) Who that official has reason to believe has committed or is found to have committed any act which would be a ground for revocation or suspension under subsection (1); or

(c) Who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

Section 20. Subsections (3) and (7) of section 1012.796, Florida Statutes, are 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 and of all referrals by the Florida High School Athletic Association (FHSAA) pursuant to ss. 1006.20(2)(b) and 1012.795. The department general counsel or members of that staff shall review the investigation or the referral 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 deferred prosecution


927682

agreements shall become effective when filed with the clerk of the Education Practices Commission. However, a deferred prosecution agreement 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, or for referrals by the FHSAA. Upon finding no probable cause, the commissioner shall dismiss the complaint.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant’s application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed $2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or termination of

employment in the state in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

927682

The penalties imposed under this subsection are in addition to, and not in lieu of, the penalties required for a third recruiting offense pursuant to s. 1006.20(2)(b).

Section 21. Except as otherwise expressly provided in this act, this act shall take effect July 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 education; amending s. 1001.42, F.S.; revising the duties of a district school board; creating s. 1001.67, F.S.; establishing a collaboration between the state board and the Legislature to designate certain Florida College System institutions as distinguished colleges; specifying standards for the designation; requiring the state board to award the designation to certain Florida College System institutions; providing that the designated institutions are eligible for funding as specified in the General Appropriations Act; amending s. 1002.20, F.S.; revising public school choice options available to students to include CAPE digital tools, CAPE industry certifications, and collegiate high school programs; authorizing parents of public school students to seek private educational choice options through the Florida Personal Learning

Scholarship Accounts Program under certain circumstances; revising student eligibility requirements for participating in high school athletic competitions; authorizing public schools to provide transportation to students participating in open enrollment; amending s. 1002.31, F.S.; requiring each district school board and charter school governing board to authorize a parent to have his or her child participate in controlled open enrollment; requiring the school district to report the student for purposes of the school district's funding; authorizing a school district to provide transportation to such students; requiring that each district school board adopt and publish on its website a controlled open enrollment process; specifying criteria for the process; prohibiting a school district from delaying or preventing a student who participates in controlled open enrollment from being immediately eligible to participate in certain activities; amending s. 1002.33, F.S.; making technical changes relating to requirements for the creation of a virtual charter school; conforming cross-references; specifying that a sponsor may not require a charter school to adopt the sponsor's reading plan and that charter schools are eligible for the research-based reading allocation if certain criteria are met; revising required contents of charter school applications; conforming provisions regarding the appeal process for denial of a high-performing charter school application; requiring an

applicant to provide the sponsor with a copy of an appeal to an application denial; authorizing a charter school to defer the opening of its operations for up to a specified time; requiring the charter school to provide written notice to certain entities by a specified date; revising provisions relating to long-term charters and charter terminations; specifying notice requirements for voluntary closure of a charter school; deleting a requirement that students in a blended learning course receive certain instruction in a classroom setting; providing that a student may not be dismissed from a charter school based on his or her academic performance; requiring a charter school applicant to provide monthly financial statements before opening; requiring a sponsor to review each financial statement of a charter school to identify the existence of certain conditions; providing for the automatic termination of a charter contract if certain conditions are met; requiring a sponsor to notify certain parties when a charter contract is terminated for specific reasons; authorizing governing board members to hold a certain number of public meetings and participate in such meetings in person or through communications media technology; revising charter school student eligibility requirements; revising requirements for payments to charter schools; allowing for the use of certain surpluses and assets by specific entities for certain educational purposes; providing for an injunction under certain

circumstances; establishing the administrative fee that a sponsor may withhold for charter schools operating in a critical need area; providing an exemption from certain administrative fees; amending s. 1002.37, F.S.; revising the calculation of "full-time equivalent student"; conforming a cross-reference; amending s. 1002.45, F.S.; conforming a cross-reference; deleting a provision related to educational funding for students enrolled in certain virtual education courses; revising conditions for termination of a virtual instruction provider's contract; creating s. 1003.3101, F.S.; requiring each school district board to establish a classroom teacher transfer process for parents, to approve or deny a transfer request within a certain timeframe, to notify a parent of a denial, and to post an explanation of the transfer process in the student handbook or a similar publication; amending s. 1003.4295, F.S.; revising the purpose of the Credit Acceleration Program; requiring students to earn passing scores on specified assessments and examinations to earn course credit; amending s. 1004.935, F.S.; deleting the scheduled termination of the Adults with Disabilities Workforce Education Pilot Program; changing the name of the program to the "Adults with Disabilities Workforce Education Program"; amending s. 1006.15, F.S.; defining the term "eligible to participate"; conforming provisions to changes made by the act; prohibiting a school district from delaying or


927682

preventing a student who participates in open controlled enrollment from being immediately eligible to participate in certain activities; authorizing a transfer student to immediately participate in interscholastic or intrascholastic activities under certain circumstances; prohibiting a school district or the Florida High School Athletic Association (FHSAA) from declaring a transfer student ineligible under certain circumstances; amending s. 1006.20, F.S.; requiring the FHSAA to allow a private school to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging a private school from maintaining membership in the FHSAA and another athletic association; authorizing the FHSAA to allow a public school to apply for consideration to join another athletic association; specifying penalties for recruiting violations; requiring a school to forfeit a competition in which a student who was recruited by specified adults participated; revising circumstances under which a student may be declared ineligible; requiring student ineligibility to be established by a preponderance of the evidence; amending s. 1011.61, F.S.; revising the definition of "full-time equivalent student"; amending s. 1011.62, F.S.; conforming a cross-reference; revising the calculation for certain supplemental funds for exceptional student education programs; requiring the funds to be prorated under certain circumstances; revising the funding of full-time

equivalent values for students who earn CAPE industry certifications through dual enrollment; deleting a provision prohibiting a teacher's bonus from exceeding a specified amount; creating a federally connected student supplement for school districts; specifying eligibility requirements and calculations for allocations of the supplement; amending s. 1011.71, F.S.; conforming a cross-reference; amending s. 1012.42, F.S.; authorizing a parent of a child whose teacher is teaching outside the teacher's field to request that the child be transferred to another classroom teacher within the school and grade in which the child is currently enrolled within a specified timeframe; specifying that a transfer does not provide a parent the right to choose a specific teacher; amending s. 1012.56, F.S.; authorizing a charter school to develop and operate a professional development certification and education competency program; creating s. 1012.583, F.S.; requiring the Department of Education to incorporate training in youth suicide awareness and prevention into certain instructional personnel continuing education or inservice training requirements; requiring the department, in consultation with the Statewide Office for Suicide Prevention and suicide prevention experts, to develop a list of approved materials for the training; specifying requirements for training materials; requiring the training to be included in the existing continuing education or inservice


927682

training requirements; providing that no cause of action results from the implementation of this act; providing for rulemaking; amending ss. 1012.795 and 1012.796, F.S.; conforming provisions to changes made by the act; amending s. 1013.62, F.S.; revising eligibility requirements for charter school capital outlay funding; revising charter school funding allocations; providing effective dates.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Negron) recommended the following:

Senate Amendment to Amendment (927682) (with title amendment)

Between lines 1566 and 1567
insert:

Section 13. Section 1009.893, Florida Statutes, is amended to read:

1009.893 Benacquisto Scholarship ~~Florida National Merit Scholar Incentive~~ Program.—

(1) As used in this section, the term:

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(a) "Department" means the Department of Education.

(b) "Scholarship ~~Incentive~~ program" means the Benacquisto Scholarship ~~Florida National Merit Scholar Incentive~~ Program.

(2) The Benacquisto Scholarship ~~Florida National Merit Scholar Incentive~~ Program is created to reward any Florida high school graduate who receives recognition as a National Merit Scholar or National Achievement Scholar and who initially enrolls in the 2014-2015 academic year or, later, in a baccalaureate degree program at an eligible Florida public or independent postsecondary educational institution.

(3) The department shall administer the scholarship ~~incentive~~ program according to rules and procedures established by the State Board of Education. The department shall advertise the availability of the scholarship ~~incentive~~ program and notify students, teachers, parents, certified school counselors, and principals or other relevant school administrators of the criteria.

(4) In order to be eligible for an award under the scholarship ~~incentive~~ program, a student must:

(a) Be a state resident as determined in s. 1009.40 and rules of the State Board of Education;

(b) Earn a standard Florida high school diploma or its equivalent pursuant to s. 1002.3105, s. 1003.4281, s. 1003.4282, or s. 1003.435 unless:

1. The student completes a home education program according to s. 1002.41; or

2. The student earns a high school diploma from a non-Florida school while living with a parent who is on military or public service assignment out of this state;

412670

(c) Be accepted by and enroll in a Florida public or independent postsecondary educational institution that is regionally accredited; and

(d) Be enrolled full-time in a baccalaureate degree program at an eligible regionally accredited Florida public or independent postsecondary educational institution during the fall academic term following high school graduation.

(5)(a) An eligible student who is a National Merit Scholar or National Achievement Scholar and who attends a Florida public postsecondary educational institution shall receive a scholarship ~~an incentive~~ award equal to the institutional cost of attendance minus the sum of the student's Florida Bright Futures Scholarship and National Merit Scholarship or National Achievement Scholarship.

(b) An eligible student who is a National Merit Scholar or National Achievement Scholar and who attends a Florida independent postsecondary educational institution shall receive a scholarship ~~an incentive~~ award equal to the highest cost of attendance at a Florida public university, as reported by the Board of Governors of the State University System, minus the sum of the student's Florida Bright Futures Scholarship and National Merit Scholarship or National Achievement Scholarship.

(6)(a) To be eligible for a renewal award, a student must earn all credits for which he or she was enrolled and maintain a 3.0 or higher grade point average.

(b) A student may receive the scholarship ~~incentive~~ award for a maximum of 100 percent of the number of credit hours required to complete a baccalaureate degree program, or until completion of a baccalaureate degree program, whichever comes

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first.

(7) The department shall annually issue awards from the scholarship ~~incentive~~ program. Before the registration period each semester, the department shall transmit payment for each award to the president or director of the postsecondary educational institution, or his or her representative, except that the department may withhold payment if the receiving institution fails to report or to make refunds to the department as required in this section.

(a) Each institution shall certify to the department the eligibility status of each student to receive a disbursement within 30 days before the end of its regular registration period, inclusive of a drop and add period. An institution is not required to reevaluate the student eligibility after the end of the drop and add period.

(b) An institution that receives funds from the scholarship ~~incentive~~ program must certify to the department the amount of funds disbursed to each student and remit to the department any undisbursed advances within 60 days after the end of regular registration.

(c) If funds appropriated are not adequate to provide the maximum allowable award to each eligible student, awards must be prorated using the same percentage reduction.

(8) Funds from any award within the scholarship ~~incentive~~ program may not be used to pay for remedial coursework or developmental education.

(9) A student may use an award for a summer term if funds are available and appropriated by the Legislature.

(10) The department shall allocate funds to the appropriate

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institutions and collect and maintain data regarding the scholarship ~~incentive~~ program within the student financial assistance database as specified in s. 1009.94.

(11) Section 1009.40(4) does not apply to awards issued under this section.

(12) A student who receives an award under the scholarship program shall be known as a Benacquisto Scholar.

(13) All eligible Florida public or independent postsecondary educational institutions are encouraged to become, and all eligible state universities shall become, college sponsors of the National Merit Scholarship Program.

(14)~~(12)~~ The State Board of Education shall adopt rules necessary to administer this section.

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

And the title is amended as follows:

Delete line 2382

and insert:

the evidence; amending s. 1009.893, F.S.; changing the name of the "Florida National Merit Scholar Incentive Program" to the "Benacquisto Scholarship Program"; providing that a student who receives a scholarship award under the program will be referred to as a Benacquisto Scholar; encouraging all eligible Florida public or independent postsecondary educational institutions, and requiring all eligible state universities, to become college sponsors of the National Merit Scholarship Program; amending s. 1011.61, F.S.; revising the

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (927682) (with title amendment)

Between lines 1049 and 1050
insert:

Section 10. Subsection (3) of section 1003.455, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

1003.455 Physical education; assessment.—

(3) Each district school board shall provide 150 minutes of

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physical education each week for students in kindergarten through grade 5 and for students in grade 6 who are enrolled in a school that contains one or more elementary grades so that on any day during which physical education instruction is conducted there are at least 30 consecutive minutes of physical education instruction per day. Beginning with the 2009-2010 school year, the equivalent of one class period per day of physical education for one semester of each year is required for students enrolled in grades 6 through 8. Students enrolled in such instruction shall be reported through the periodic student membership surveys, and records of such enrollment shall be audited pursuant to s. 1010.305. Such instruction may be provided by any instructional personnel as defined in s. 1012.01(2), regardless of certification, who are designated by the school principal.

(6) In addition to the requirements in subsection (3), each district school board shall provide 100 minutes of supervised, safe, and unstructured free-play recess each week for students in kindergarten through grade 5 and for students in grade 6 who are enrolled in a school that contains one or more elementary grades so that there are at least 20 consecutive minutes of free-play recess per day.

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

And the title is amended as follows:

Delete line 2352

and insert:

credit; amending s. 1003.455, F.S.; requiring each district school board to provide students in certain grades with a specified number of consecutive minutes


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of free-play recess per day; amending s. 1004.935,F.S.; deleting the

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576-02722-16

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to education; amending s. 39.201, F.S.; providing an exception from a prohibition against the use of information in the Department of Children and Families central abuse hotline for employment screening of certain child care personnel; amending s. 39.202, F.S.; expanding the list of entities that have access to child abuse records for purposes of approving providers of school readiness services; amending s. 402.302, F.S.; revising the definition of the term "screening" for purposes of child care licensing requirements; amending s. 402.3057, F.S.; clarifying individuals who are exempt from certain refingerprinting or rescreening requirements; amending s. 402.306, F.S.; requiring the Department of Children and Families and local licensing agencies to electronically post certain information relating to child care and school readiness providers; amending s. 402.311, F.S.; requiring school readiness program providers to provide the Department of Children and Families or local licensing agencies with access to facilities, personnel, and records for inspection purposes; amending s. 402.319, F.S.; requiring certain child care providers to submit an affidavit of compliance with certain mandatory reporting requirements; amending s. 409.1757, F.S.; clarifying individuals who

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are exempt from certain refingerprinting or rescreening requirements; amending s. 435.07, F.S.; providing criteria for a person's disqualification from employment with a school readiness program provider; amending s. 1001.42, F.S.; revising the duties of a district school board; creating s. 1001.67, F.S.; establishing a collaboration between the state board and the Legislature to designate certain Florida College System institutions as distinguished colleges; specifying standards for the designation; requiring the state board to award the designation to certain Florida College System institutions; providing that the designated institutions are eligible for funding as specified in the General Appropriations Act; amending s. 1002.82, F.S.; revising the duties of the Office of Early Learning of the Department of Education; requiring the office to coordinate with the Department of Children and Families and local licensing agencies for inspections of school readiness program providers; amending s. 1002.84, F.S.; revising provisions relating to determination of child eligibility for school readiness programs; revising requirements for determining parent copayments for the programs; amending s. 1002.87, F.S.; revising the prioritization of participation in school readiness programs; revising school readiness program eligibility requirements for parents; amending s. 1002.88, F.S.; revising requirements for school readiness program

providers; amending s. 1002.89, F.S.; providing for additional uses of funds for school readiness programs; amending s. 1004.935, F.S.; deleting the scheduled termination of the Adults with Disabilities Workforce Education Pilot Program; changing the name of the program to the "Adults with Disabilities Workforce Education Program"; amending s. 1011.62, F.S.; revising the calculation for certain supplemental funds for exceptional student education programs; requiring the funds to be prorated under certain circumstances; revising the funding of full-time equivalent values for students who earn CAPE industry certifications through dual enrollment; deleting a provision prohibiting a teacher's bonus from exceeding a specified amount; creating a federally connected student supplement for school districts; specifying eligibility requirements and calculations for allocations of the supplement; amending s. 1011.71, F.S.; conforming a cross-reference; providing effective dates.

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

Section 1. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s.

39.202(2)(a) and (h) or s. 402.302(15). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

Section 2. Paragraph (a) of subsection (2) of section 39.202, Florida Statutes, is amended 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:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, ~~or~~ family day care homes, ~~or informal child care~~ providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children; or

6. Services for victims of domestic violence when provided

by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

Section 3. Subsection (15) of section 402.302, Florida Statutes, is amended to read:

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

(15) "Screening" means the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes, but is not limited to:~~,~~

(a) Employment history checks, including documented attempts to contact each employer that employed the applicant within the preceding 5 years and documentation of the findings.

(b) A search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years.

An applicant must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to ~~local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through~~ the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to~~, and federal criminal records checks~~

~~through~~ the Federal Bureau of Investigation for national processing.

Section 4. Section 402.3057, Florida Statutes, is amended to read:

402.3057 Individuals ~~Persons~~ not required to be refingerprinted or rescreened.—Individuals ~~Any provision of law to the contrary notwithstanding, human resource personnel~~ who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, ~~and teachers and noninstructional personnel who have been fingerprinted pursuant to chapter 1012,~~ who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c), 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6), are ~~shall~~ not ~~be~~ required to be refingerprinted or rescreened in order to comply with any ~~caretaker~~ screening or fingerprinting requirements of this chapter.

Section 5. Subsection (3) of section 402.306, Florida Statutes, is amended to read:

402.306 Designation of licensing agency; dissemination by the department and local licensing agency of information on child care.—

(3) The department and local licensing agencies, or the designees thereof, shall be responsible for coordination and dissemination of information on child care to the community and shall make available through electronic means ~~upon request~~ all licensing standards and procedures, health and safety standards

for school readiness providers, monitoring and inspection reports, and ~~in addition to~~ the names and addresses of licensed child care facilities, school readiness program providers, and, where applicable pursuant to s. 402.313, licensed or registered family day care homes. This information must also include the number of deaths, serious injuries, and instances of substantiated child abuse which have occurred in child care settings each year; research and best practices in child development; and resources regarding social-emotional development, parent and family engagement, healthy eating, and physical activity.

Section 6. Section 402.311, Florida Statutes, is amended to read:

402.311 Inspection.—

(1) A licensed child care facility shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities and personnel and to those records required in s. 402.305, at reasonable times during regular business hours, to ensure compliance with ~~the provisions of~~ ss. 402.301-402.319. The right of entry and inspection shall also extend to any premises which the department or local licensing agency has reason to believe are being operated or maintained as a child care facility without a license, but no such entry or inspection of any premises shall be made without the permission of the person in charge thereof unless a warrant is first obtained from the circuit court authorizing such entry or inspection ~~same~~. Any application for a license or renewal made pursuant to this act or the advertisement to the public for the provision of child

care as defined in s. 402.302 shall constitute permission for any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application. In the event a licensed facility refuses permission for entry or inspection to the department or local licensing agency, a warrant shall be obtained from the circuit court authorizing entry or inspection before ~~same prior to~~ such entry or inspection. The department or local licensing agency may institute disciplinary proceedings pursuant to s. 402.310~~,~~ for such refusal.

(2) A school readiness program provider shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities, personnel, and records, to verify compliance with s. 1002.88. Entry, inspection, and issuance of an inspection report by the department or the local licensing agency to verify compliance with s. 1002.88 is an exercise of a discretionary power to enforce compliance with the laws duly enacted by a governmental body.

(3) The department's issuance, transmittal, or publication of an inspection report resulting from an inspection under this section does not constitute agency action subject to chapter 120.

Section 7. Subsection (3) is added to section 402.319, Florida Statutes, to read:

402.319 Penalties.—

(3) Each child care facility, family day care home, and large family day care home shall annually submit an affidavit of compliance with s. 39.201.

Section 8. Section 409.1757, Florida Statutes, is amended to read:

409.1757 Individuals ~~Persons~~ not required to be refingerprinted or rescreened.—Individuals ~~Any law to the contrary notwithstanding, human resource personnel~~ who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and this chapter, teachers who have been fingerprinted pursuant to chapter 1012, and law enforcement officers who meet the requirements of s. 943.13, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c), 393.0655(1), 394.457(6), 397.451, 402.305(2), 409.175(6), and 943.13(7), are not required to be refingerprinted or rescreened in order to comply with any ~~caretaker~~ screening or fingerprinting requirements of this chapter.

Section 9. Paragraph (c) is added to subsection (4) of section 435.07, Florida Statutes, to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(4)

(c) A person is ineligible for employment with a provider that receives school readiness funding under part VI of chapter

1002 if the person has been convicted of:

1. A felony offense prohibited under any of the following statutes:

a. Chapter 741, relating to domestic violence.

b. Section 782.04, relating to murder.

c. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

d. Section 784.021, relating to aggravated assault.

e. Section 784.045, relating to aggravated battery.

f. Section 787.01, relating to kidnapping.

g. Section 787.025, relating to luring or enticing a child.

h. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent, pending custody proceedings.

i. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent, pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

j. Section 794.011, relating to sexual battery.

k. Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

l. Section 794.05, relating to unlawful sexual activity with certain minors.

m. Section 794.08, relating to female genital mutilation.

n. Section 806.01, relating to arson.

o. Section 826.04, relating to incest.

p. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

q. Section 827.04, relating to contributing to the delinquency or dependency of a child.

r. Section 827.071, relating to sexual performance by a child.

s. Section 985.701, relating to sexual misconduct in juvenile justice programs.

2. A misdemeanor offense prohibited under any of the following statutes:

a. Section 784.03, relating to battery, if the victim of the offense was a minor.

b. Section 787.025, relating to luring or enticing a child.

3. A criminal act committed in another state or under federal law which, if committed in this state, would constitute an offense prohibited under any statute listed in subparagraph 1. or subparagraph 2.

Section 10. Present subsection (27) of section 1001.42, Florida Statutes, is redesignated as subsection (28), and a new subsection (27) is added to that section, 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:

(27) VISITATION OF SCHOOLS.—Visit the schools, observe the management and instruction, give suggestions for improvement, and advise citizens with the view of promoting interest in

education and improving the school.

Section 11. Section 1001.67, Florida Statutes, is created to read:

1001.67 Distinguished Florida College System Program.—A collaborative partnership is established between the State Board of Education and the Legislature to recognize the excellence of Florida's highest-performing Florida College system institutions.

(1) EXCELLENCE STANDARDS.—The following excellence standards are established for the program:

(a) A 150 percent-of-normal-time completion rate of 50 percent or higher, as calculated by the Division of Florida Colleges.

(b) A 150 percent-of-normal-time completion rate for Pell Grant recipients of 40 percent or higher, as calculated by the Division of Florida Colleges.

(c) A retention rate of 70 percent or higher, as calculated by the Division of Florida Colleges.

(d) A continuing education, or transfer, rate of 72 percent or higher for students graduating with an associate of arts degree, as reported by the Florida Education and Training Placement Information Program (FETPIP).

(e) A licensure passage rate on the National Council Licensure Examination for Registered Nurses (NCLEX-RN) of 90 percent or higher for first-time exam takers, as reported by the Board of Nursing.

(f) A job placement or continuing education rate of 88 percent or higher for workforce programs, as reported by FETPIP.

(g) A time-to-degree for students graduating with an

associate of arts degree of 2.25 years or less for first-time-in-college students with accelerated college credits, as reported by the Southern Regional Education Board.

(2) DISTINGUISHED COLLEGE DESIGNATION.—The State Board of Education shall designate each Florida College System institution that meets five of the seven standards identified in subsection (1) as a distinguished college.

(3) DISTINGUISHED COLLEGE SUPPORT.—A Florida College System institution designated as a distinguished college by the State Board of Education is eligible for funding as specified in the General Appropriations Act.

Section 12. Paragraph (i) of subsection (2) of section 1002.82, Florida Statutes, is amended, and paragraphs (s) through (x) are added to that subsection, to read:

1002.82 Office of Early Learning; powers and duties.—

(2) The office shall:

(i) Enter into a memorandum of understanding with local licensing agencies and ~~Develop, in coordination with~~ the Child Care Services Program Office of the Department of Children and Families for inspections of school readiness program providers to monitor and verify compliance with s. 1002.88 and the health and safety checklist adopted by the office. The provider contract of a school readiness program provider that refuses permission for entry or inspection shall be terminated. The~~, and adopt a~~ health and safety checklist may ~~to be completed by license-exempt providers that does~~ not exceed the requirements of s. 402.305 and the Child Care and Development Fund pursuant to 45 C.F.R. part 98.

(s) Develop and implement strategies to increase the supply

and improve the quality of child care services for infants and toddlers, children with disabilities, children who receive care during nontraditional hours, children in underserved areas, and children in areas that have significant concentrations of poverty and unemployment.

(t) Establish preservice and inservice training requirements that address, at a minimum, school readiness child development standards, health and safety requirements, and social-emotional behavior intervention models, which may include positive behavior intervention and support models.

(u) Establish standards for emergency preparedness plans for school readiness program providers.

(v) Establish group sizes.

(w) Establish staff-to-children ratios that do not exceed the requirements of s. 402.302(8) or (11) or s. 402.305(4), as applicable, for school readiness program providers.

(x) Establish eligibility criteria, including limitations based on income and family assets, in accordance with s. 1002.87 and federal law.

Section 13. Subsections (7) and (8) of section 1002.84, Florida Statutes, are amended to read:

1002.84 Early learning coalitions; school readiness powers and duties.—Each early learning coalition shall:

(7) Determine child eligibility pursuant to s. 1002.87 and provider eligibility pursuant to s. 1002.88. ~~At a minimum,~~ Child eligibility must be redetermined annually. ~~Redetermination must also be conducted twice per year for an additional 50 percent of a coalition's enrollment through a statistically valid random sampling.~~ A coalition must document the reason ~~why~~ a child is no

longer eligible for the school readiness program according to the standard codes prescribed by the office.

(8) Establish a parent sliding fee scale that provides for ~~requires~~ a parent copayment that is not a barrier to families receiving ~~to participate in the~~ school readiness program services. Providers are required to collect the parent's copayment. A coalition may, on a case-by-case basis, waive the copayment for an at-risk child or temporarily waive the copayment for a child whose family's income is at or below the federal poverty level and whose family experiences a natural disaster or an event that limits the parent's ability to pay, such as incarceration, placement in residential treatment, or becoming homeless, or an emergency situation such as a household fire or burglary, or while the parent is participating in parenting classes. A parent may not transfer school readiness program services to another school readiness program provider until the parent has submitted documentation from the current school readiness program provider to the early learning coalition stating that the parent has satisfactorily fulfilled the copayment obligation.

Section 14. Subsections (1), (4), (5), and (6) of section 1002.87, Florida Statutes, are amended to read:

1002.87 School readiness program; eligibility and enrollment.—

(1) ~~Effective August 1, 2013, or upon reevaluation of eligibility for children currently served, whichever is later,~~ Each early learning coalition shall give priority for participation in the school readiness program as follows:

(a) Priority shall be given first to a child younger than

13 years of age from a family that includes a parent who is receiving temporary cash assistance under chapter 414 and subject to the federal work requirements.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Priority shall be given next to a child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. until the beginning of the school year in which the sibling is eligible to begin 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services. ~~However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.~~

(d) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(e) Priority shall be given next to an at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness program within an eligibility priority category listed in paragraphs (a)-(c) shall be given priority over other children

who are eligible under this paragraph.

(f) Priority shall be given next to a child who is younger than 13 years of age from a working family that is economically disadvantaged. A child who is eligible under this paragraph whose sibling is enrolled in the school readiness program under paragraph (c) shall be given priority over other children who are eligible under this paragraph. ~~However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.~~

(g) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 who is younger than 13 years of age.

(h) Priority shall be given next to a child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. A special needs child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(i) Notwithstanding paragraphs (a)-(d), priority shall be given last to a child who otherwise meets one of the eligibility criteria in paragraphs (a)-(d) but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(4) The parent of a child enrolled in the school readiness program must notify the coalition or its designee within 10 days after any change in employment status, income, or family size or failure to maintain attendance at a job training or educational program in accordance with program requirements. ~~Upon~~

~~notification by the parent, the child's eligibility must be reevaluated.~~

(5) A child whose eligibility priority category requires the child to be from a working family ceases to be eligible for the school readiness program if a parent with whom the child resides does not reestablish employment or resume attendance at a job training or educational program within 90 ~~60~~ days after becoming unemployed or ceasing to attend a job training or educational program.

(6) Eligibility for each child must be reevaluated annually. Upon reevaluation, a child may not continue to receive school readiness program services if he or she has ceased to be eligible under this section. A child who is ineligible due to a parent's job loss or cessation of job training or education shall continue to receive school readiness program services for at least 3 months to enable the parent to obtain employment.

Section 15. Paragraphs (c), (d), and (e) of subsection (1) of section 1002.88, Florida Statutes, are amended to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(c) Provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program.

1. For a provider that is licensed ~~child care facility, a large family child care home, or a licensed family day care home~~, compliance with s. 402.305, s. 402.3131, or s. 402.313 and

this subsection, as verified pursuant to s. 402.311, satisfies this requirement.

2. For a provider that is a registered family day care home or is not subject to licensure or registration by the Department of Children and Families, compliance with this subsection, as verified pursuant to s. 402.311, satisfies this requirement. Upon such verification, the provider ~~For a public or nonpublic school, compliance with s. 402.3025 or s. 1003.22 satisfies this requirement. A faith-based child care provider, an informal child care provider, or a nonpublic school, exempt from licensure under s. 402.316 or s. 402.3025,~~ shall annually post ~~complete~~ the health and safety checklist adopted by the office~~,~~ ~~post the checklist~~ prominently on its premises in plain sight for visitors and parents~~,~~ and shall annually submit the checklist ~~it annually~~ to its local early learning coalition.

(d) Provide an appropriate group size and staff-to-children ratio~~, pursuant to s. 402.305(4) or s. 402.302(8) or (11), as applicable, and as verified pursuant to s. 402.311~~.

(e) Employ child care personnel, as defined in s. 402.302(3), who have satisfied the screening requirements of chapter 402 and fulfilled the training requirements of the office ~~Provide a healthy and safe environment pursuant to s. 402.305(5), (6), and (7), as applicable, and as verified pursuant to s. 402.311~~.

Section 16. Paragraph (b) of subsection (6) and subsection (7) of section 1002.89, Florida Statutes, are amended to read:

1002.89 School readiness program; funding.—

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness

program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which must ~~shall~~ be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public to promote informed child care choices specified in 45 C.F.R. s. 98.33 ~~regarding participation in the school readiness program and parental choice~~.

2. Awarding grants and providing financial support to school readiness program providers and their staff to assist them in meeting applicable state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support curricula, providing literacy supports, and providing continued professional development and training. Any grants awarded pursuant to this subparagraph shall comply with ~~the requirements of~~ ss. 215.971 and 287.058.

3. Providing training, ~~and~~ technical assistance, and financial support to ~~for~~ school readiness program providers and their~~,~~ staff~~,~~ and parents on standards, child screenings, child assessments, child development research and best practices,


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576-02722-16

developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, cardiopulmonary resuscitation, the recognition of communicable diseases, and child abuse detection, ~~and~~ prevention, and reporting.

4. Providing, from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents ~~related to school readiness program children~~, including providing developmental and health screenings to school readiness program children.

(7) Funds appropriated for the school readiness program may not be expended for the purchase or improvement of land; for the purchase, construction, or permanent improvement of any building or facility; or for the purchase of buses. However, funds may be expended for minor remodeling and upgrading of child care facilities which is necessary for the administration of the program and to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

Section 17. Effective June 29, 2016, section 1004.935, Florida Statutes, is amended to read:


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1004.935 Adults with Disabilities Workforce Education ~~Pilot~~ Program.—

(1) The Adults with Disabilities Workforce Education ~~Pilot~~ Program is established in the Department of Education ~~through June 30, 2016,~~ in Hardee, DeSoto, Manatee, and Sarasota Counties to provide the option of receiving a scholarship for instruction at private schools for up to 30 students who:

(a) Have a disability;

(b) Are 22 years of age;

(c) Are receiving instruction from an instructor in a private school to meet the high school graduation requirements in s. 1002.3105(5) or s. 1003.4282;

(d) Do not have a standard high school diploma or a special high school diploma; and

(e) Receive "supported employment services," which means employment that is located or provided in an integrated work setting with earnings paid on a commensurate wage basis and for which continued support is needed for job maintenance.

As used in this section, the term "student with a disability" includes a student who is documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.

(2) A student participating in the ~~pilot~~ program may continue to participate in the program until the student graduates from high school or reaches the age of 40 years, whichever occurs first.

(3) Supported employment services may be provided at more than one site.

(4) The provider of supported employment services must be a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code which serves Hardee County, DeSoto County, Manatee County, or Sarasota County and must contract with a private school in this state which meets the requirements in subsection (5).

(5) A private school that participates in the ~~pilot~~ program may be sectarian or nonsectarian and must:

(a) Be academically accountable for meeting the educational needs of the student by annually providing to the provider of supported employment services a written explanation of the student's progress.

(b) Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.

(c) Meet state and local health and safety laws and codes.

(d) Provide to the provider of supported employment services all documentation required for a student's participation, including the private school's and student's fee schedules, at least 30 days before any quarterly scholarship payment is made for the student. A student is not eligible to receive a quarterly scholarship payment if the private school fails to meet this deadline.

The inability of a private school to meet the requirements of

this subsection constitutes a basis for the ineligibility of the private school to participate in the ~~pilot~~ program.

(6)(a) If the student chooses to participate in the ~~pilot~~ program and is accepted by the provider of supported employment services, the student must notify the Department of Education of his or her acceptance into the program 60 days before the first scholarship payment and before participating in the ~~pilot~~ program in order to be eligible for the scholarship.

(b) Upon receipt of a scholarship warrant, the student or parent to whom the warrant is made must restrictively endorse the warrant to the provider of supported employment services for deposit into the account of the provider. The student or parent may not designate any entity or individual associated with the participating provider of supported employment services as the student's or parent's attorney in fact to endorse a scholarship warrant. A participant who fails to comply with this paragraph forfeits the scholarship.

(7) Funds for the scholarship shall be provided from the appropriation from the school district's Workforce Development Fund in the General Appropriations Act for students who reside in the Hardee County School District, the DeSoto County School District, the Manatee County School District, or the Sarasota County School District. ~~During the pilot program,~~ The scholarship amount granted for an eligible student with a disability shall be equal to the cost per unit of a full-time equivalent adult general education student, multiplied by the adult general education funding factor, and multiplied by the district cost differential pursuant to the formula required by s. 1011.80(6)(a) for the district in which the student resides.

(8) Upon notification by the Department of Education that it has received the required documentation, the Chief Financial Officer shall make scholarship payments in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the scholarship is in force. The initial payment shall be made after the Department of Education verifies that the student was accepted into the ~~pilot~~ program, and subsequent payments shall be made upon verification of continued participation in the ~~pilot~~ program. Payment must be by individual warrant made payable to the student or parent and mailed by the Department of Education to the provider of supported employment services, and the student or parent shall restrictively endorse the warrant to the provider of supported employment services for deposit into the account of that provider.

(9) Subsequent to each scholarship payment, the Department of Education shall request from the Department of Financial Services a sample of endorsed warrants to review and confirm compliance with endorsement requirements.

Section 18. Effective July 1, 2016, and upon the expiration of the amendment to section 1011.62, Florida Statutes, made by chapter 2015-222, Laws of Florida, paragraphs (e) and (o) of subsection (1), paragraph (a) of subsection (4), and present subsection (13) of that section are amended, present subsections (13), (14), and (15) of that section are redesignated as subsections (14), (15), and (16), respectively, and a new subsection (13) is added to that section, 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 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.

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 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)(l) and rules of the State Board of Education, which shall be allocated initially ~~annually~~ to each school district in the amount provided in the General Appropriations Act. These funds shall be supplemental ~~in addition~~ to the funds appropriated for the basic funding level ~~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 once during the year, based on actual student membership from the October FTE survey. Upon recalculation, if the generated allocation is greater than the amount provided in the General Appropriations Act, the total shall be prorated to the level of the appropriation based on each district's share of the total recalculated amount. 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.

(o) *Calculation of additional full-time equivalent membership based on successful completion of a career-themed course pursuant to ss. 1003.491, 1003.492, and 1003.493, or courses with embedded CAPE industry certifications or CAPE Digital Tool certificates, and issuance of industry certification identified on the CAPE Industry Certification Funding List pursuant to rules adopted by the State Board of Education or CAPE Digital Tool certificates pursuant to s. 1003.4203.*—

1.a. A value of 0.025 full-time equivalent student membership shall be calculated for CAPE Digital Tool certificates earned by students in elementary and middle school grades.

b. A value of 0.1 or 0.2 full-time equivalent student membership shall be calculated for each student who completes a course as defined in s. 1003.493(1)(b) or courses with embedded CAPE industry certifications and who is issued an industry certification identified annually on the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education. A value of 0.2 full-time equivalent membership shall be calculated for each student who is issued a CAPE industry certification that has a statewide articulation agreement for college credit approved by the State Board of Education. For CAPE industry certifications that do not

articulate for college credit, the Department of Education shall assign a full-time equivalent value of 0.1 for each certification. Middle grades students who earn additional FTE membership for a CAPE Digital Tool certificate pursuant to sub-subparagraph a. may not use the previously funded examination to satisfy the requirements for earning an industry certification under this sub-subparagraph. Additional FTE membership for an elementary or middle grades student may ~~shall~~ not exceed 0.1 for certificates or certifications earned within the same fiscal year. The State Board of Education shall include the assigned values on the CAPE Industry Certification Funding List under rules adopted by the state board. Such value shall be added to the total full-time equivalent student membership for grades 6 through 12 in the subsequent year ~~for courses that were not provided through dual enrollment~~. CAPE industry certifications earned through dual enrollment must be reported and funded pursuant to s. 1011.80. However, if a student earns a certification through a dual enrollment course and the certification is not a fundable certification on the postsecondary certification funding list, or the dual enrollment certification is earned as a result of an agreement between a school district and a nonpublic postsecondary institution, the bonus value shall be funded in the same manner as other nondual enrollment course industry certifications. In such cases, the school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

c. A value of 0.3 full-time equivalent student membership

shall be calculated for student completion of the courses and the embedded certifications identified on the CAPE Industry Certification Funding List and approved by the commissioner pursuant to ss. 1003.4203(5)(a) and 1008.44.

d. A value of 0.5 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 15 to 29 college credit hours, and 1.0 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 30 or more college credit hours pursuant to CAPE Acceleration Industry Certifications approved by the commissioner pursuant to ss. 1003.4203(5)(b) and 1008.44.

2. Each district must allocate at least 80 percent of the funds provided for CAPE industry certification, in accordance with this paragraph, to the program that generated the funds. This allocation may not be used to supplant funds provided for basic operation of the program.

3. For CAPE industry certifications earned in the 2013-2014 school year and in subsequent years, the school district shall distribute to each classroom teacher who provided direct instruction toward the attainment of a CAPE industry certification that qualified for additional full-time equivalent membership under subparagraph 1.:

a. A bonus ~~in the amount~~ of $25 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.

b. A bonus ~~in the amount~~ of $50 for each student taught by a teacher who provided instruction in a course that led to the

attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2~~, 0.3, 0.5, and 1.0~~.

c. A bonus of $75 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3.

d. A bonus of $100 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0.

Bonuses awarded pursuant to this paragraph shall be provided to teachers who are employed by the district in the year in which the additional FTE membership calculation is included in the calculation. Bonuses shall be calculated based upon the associated weight of a CAPE industry certification on the CAPE Industry Certification Funding List for the year in which the certification is earned by the student. Any bonus awarded to a teacher under this paragraph ~~may not exceed $2,000 in any given school year and~~ is in addition to any regular wage or other bonus the teacher received or is scheduled to receive.

(4) COMPUTATION OF DISTRICT REQUIRED LOCAL EFFORT.—The Legislature shall prescribe the aggregate required local effort for all school districts collectively as an item in the General Appropriations Act for each fiscal year. The amount that each district shall provide annually toward the cost of the Florida Education Finance Program for kindergarten through grade 12 programs shall be calculated as follows:

(a) *Estimated taxable value calculations.*—

1.a. Not later than 2 working days before ~~prior to~~ July 19, the Department of Revenue shall certify to the Commissioner of Education its most recent estimate of the taxable value for school purposes in each school district and the total for all school districts in the state for the current calendar year based on the latest available data obtained from the local property appraisers. The value certified shall be the taxable value for school purposes for that year, and no further adjustments shall be made, except those made pursuant to paragraphs (c) and (d), or an assessment roll change required by final judicial decisions as specified in paragraph (15)(b) ~~(14)(b)~~. Not later than July 19, the Commissioner of Education shall compute a millage rate, rounded to the next highest one one-thousandth of a mill, which, when applied to 96 percent of the estimated state total taxable value for school purposes, would generate the prescribed aggregate required local effort for that year for all districts. The Commissioner of Education shall certify to each district school board the millage rate, computed as prescribed in this subparagraph, as the minimum millage rate necessary to provide the district required local effort for that year.

b. The General Appropriations Act shall direct the computation of the statewide adjusted aggregate amount for required local effort for all school districts collectively from ad valorem taxes to ensure that no school district's revenue from required local effort millage will produce more than 90 percent of the district's total Florida Education Finance Program calculation as calculated and adopted by the

Legislature, and the adjustment of the required local effort millage rate of each district that produces more than 90 percent of its total Florida Education Finance Program entitlement to a level that will produce only 90 percent of its total Florida Education Finance Program entitlement in the July calculation.

2. On the same date as the certification in sub-subparagraph 1.a., the Department of Revenue shall certify to the Commissioner of Education for each district:

a. Each year for which the property appraiser has certified the taxable value pursuant to s. 193.122(2) or (3), if applicable, since the prior certification under sub-subparagraph 1.a.

b. For each year identified in sub-subparagraph a., the taxable value certified by the appraiser pursuant to s. 193.122(2) or (3), if applicable, since the prior certification under sub-subparagraph 1.a. This is the certification that reflects all final administrative actions of the value adjustment board.

(13) FEDERALLY CONNECTED STUDENT SUPPLEMENT.—The federally connected student supplement is created to provide supplemental funding for school districts to support the education of students connected with federally owned military installations, National Aeronautics and Space Administration (NASA) real property, and Indian lands. To be eligible for this supplement, the district must be eligible for federal Impact Aid Program funds under s. 8003 of Title VIII of the Elementary and Secondary Education Act of 1965. The supplement shall be allocated annually to each eligible school district in the amount provided in the General Appropriations Act. The

supplement shall be the sum of the student allocation and an exempt property allocation.

(a) The student allocation shall be calculated based on the number of students reported for federal Impact Aid Program funds, including students with disabilities, who meet one of the following criteria:

1. The student has a parent who is on active duty in the uniformed services or is an accredited foreign government official and military officer. Students with disabilities shall also be reported separately for this category.

2. The student resides on eligible federally owned Indian land. Students with disabilities shall also be reported separately for this category.

3. The student resides with a civilian parent who lives or works on eligible federal property connected with a military installation or NASA. The number of these students shall be multiplied by a factor of 0.5.

(b) The total number of federally connected students calculated under paragraph (a) shall be multiplied by a percentage of the base student allocation as provided in the General Appropriations Act. The total of the number of students with disabilities as reported separately under subparagraphs (a)1. and (a)2. shall be multiplied by an additional percentage of the base student allocation as provided in the General Appropriations Act. The base amount and the amount for students with disabilities shall be summed to provide the student allocation.

(c) The exempt property allocation shall be equal to the tax-exempt value of federal impact aid lands reserved as

military installations, real property owned by NASA, or eligible federally owned Indian lands located in the district, as of January 1 of the previous year, multiplied by the millage authorized and levied under s. 1011.71(2).

(14)~~(13)~~ QUALITY ASSURANCE GUARANTEE.—The Legislature may annually in the General Appropriations Act determine a percentage increase in funds per K-12 unweighted FTE as a minimum guarantee to each school district. The guarantee shall be calculated from prior year base funding per unweighted FTE student which shall include the adjusted FTE dollars as provided in subsection (15) ~~(14)~~, quality guarantee funds, and actual nonvoted discretionary local effort from taxes. From the base funding per unweighted FTE, the increase shall be calculated for the current year. The current year funds from which the guarantee shall be determined shall include the adjusted FTE dollars as provided in subsection (15) ~~(14)~~ and potential nonvoted discretionary local effort from taxes. A comparison of current year funds per unweighted FTE to prior year funds per unweighted FTE shall be computed. For those school districts which have less than the legislatively assigned percentage increase, funds shall be provided to guarantee the assigned percentage increase in funds per unweighted FTE student. Should appropriated funds be less than the sum of this calculated amount for all districts, the commissioner shall prorate each district's allocation. This provision shall be implemented to the extent specifically funded.

Section 19. Effective July 1, 2016, and upon the expiration of the amendment to section 1011.71, Florida Statutes, made by chapter 2015-222, Laws of Florida, subsection (1) of that

section is amended to read:

1011.71 District school tax.—

(1) If the district school tax is not provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, each district school board desiring to participate in the state allocation of funds for current operation as prescribed by s. 1011.62(15) ~~s. 1011.62(14)~~ shall levy on the taxable value for school purposes of the district, exclusive of millage voted under ~~the provisions of~~ s. 9(b) or s. 12, Art. VII of the State Constitution, a millage rate not to exceed the amount certified by the commissioner as the minimum millage rate necessary to provide the district required local effort for the current year, pursuant to s. 1011.62(4)(a)1. In addition to the required local effort millage levy, each district school board may levy a nonvoted current operating discretionary millage. The Legislature shall prescribe annually in the appropriations act the maximum amount of millage a district may levy.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect July 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 Appropriations

BILL:	SB 1166
INTRODUCER:	Senator Gaetz
SUBJECT:	Education Funding
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sikes	Elwell	AED	**Recommend: Fav/CS**
2.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1166 authorizes the Florida Department of Education to recalculate the Exceptional Student Education (ESE) Guaranteed Allocation for each school district based on the district's actual student full-time equivalent (FTE) as determined by the October FTE survey.

The bill has no impact on state funds. However, individual school districts may experience an increase or decrease in their ESE Guaranteed Allocation based on the results of the October FTE survey.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

In order to provide exceptional education and related services, an Exceptional Student Education (ESE) Guaranteed Allocation was established by the Legislature to provide funding through the Florida Education Finance Program (FEFP) in addition to the basic program funding.[1] This allocation is a lump sum that is derived from the number of full-time equivalent (FTE) students and the cost factors associated with the matrix of services (matrix) to document the services that each student with an exceptionality will receive.[2]

[1] Florida Department of Education, *Matrix of Services Handbook* available at http://www.fldoe.org/core/fileparse.php/7690/urlt/2015MatrixServices.pdf

[2] Section 1011.62 (1)(e)1.a., F.S.

The Florida Department of Education (DOE) developed the Matrix of Services Handbook to provide districts, schools and teachers with information about the matrix required for selected students with exceptionalities.[3] The matrix is designed with five levels in each of the following five domain areas:[4]

- Curriculum and Learning Environment: This domain addresses services provided to the student in the areas of curriculum, instructional strategies and learning environment.
- Social or Emotional Behavior: This domain includes services provided to meet identified social and emotional needs of students with exceptionalities, such as positive behavioral supports, behavioral interventions, social skills development, socialization and counseling as a related service.
- Independent Functioning: This domain includes services that are necessary for the independent functioning of students with exceptionalities, such as instruction in organizational strategies, assistance for activities of daily living and self-care, physical therapy, occupational therapy, orientation and mobility training and supervision of students to ensure physical safety
- Health Care: This domain addresses services provided to students with exceptionalities who have health care needs. Included in this domain are services related to monitoring and assessment of health conditions, provision of related health care services and interagency collaboration.
- Communication: This domain includes services provided to support the communication needs of students with exceptionalities. Services included in this domain are personal assistance, instructional interventions, speech or language therapy and the use of alternative and augmentative communication systems.

A student is evaluated within each of these five domains to determine the appropriate level of service the student requires. Level 1 represents the lowest level of service and Level 5 represents the highest level of service.[5] The frequency and intensity of the service and the qualifications of personnel required to provide the service are critical factors that impact the determination of the appropriate level of service for the student.[6]

The ESE Guaranteed Allocation was established in 2000 in conjunction with the elimination of the mandatory requirement for the determination of a matrix of services for Levels 1 through 3 ESE students. ESE services for students whose level of service is Levels 1 through 3 are funded through the ESE Guaranteed Allocation.[7] These students generate student full-time equivalent (FTE) funding using the appropriate basic program cost factor for their grade level.[8] The ESE Guaranteed Allocation provides for the additional services needed for these exceptional students.

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[3] Florida Department of Education, *Matrix of Services Handbook* available at http://www.fldoe.org/core/fileparse.php/7690/urlt/2015MatrixServices.pdf

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Florida Department of Education, *2015-16 Funding for Florida School Districts* available at http://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf

[8] The basic program cost factors are as follows:

- For grades K-3, the cost factor is 1.115
- For grades 4-8, the cost factor is 1.000
- For grades 9-12, the cost factor is 1.005

[9] For the 2015-2016 fiscal year, the average ESE Guaranteed Allocation funding per FTE is $2,007.[10] Students whose level of service is Level 4 or 5 do not receive funds from the ESE Guaranteed Allocation, but instead generate weighted funding using a higher program cost factor which provides for both their education program and their exceptional services.[11]

For the 2015-2016 fiscal year, $959,182,058 was appropriated within the FEFP for the ESE Guaranteed Allocation.[12] The allocation for each district is calculated once based on projected ESE and total FTE enrollment and is not recalculated during the school year.[13] Since the allocation is not recalculated, a school district that overestimates its ESE FTE keeps the additional funds. A school district that underestimates their ESE FTE does not receive additional funds to support its ESE student population.

III. Effect of Proposed Changes:

This bill authorizes the Florida Department of Education (DOE) to recalculate the Exceptional Student Education (ESE) Guaranteed Allocation for each school district. The ESE Guaranteed Allocation will be calculated initially in the General Appropriations Act, and recalculated based on each school district's actual ESE and total full-time equivalent (FTE) enrollment as determined by the October FTE survey. This recalculation will ensure school districts receive their appropriate share of the ESE Guaranteed Allocation based on actual enrollment rather than projected enrollment.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[9] Florida Department of Education, *2015-16 Funding for Florida School Districts* available at http://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf

[10] Florida Legislature, Conference Report on SB 2500-A, *Public School Funding: The Florida Education Finance Program (FEFP)* available at http://flsenate.gov/PublishedContent/Session/2015A/Appropriations/Documents/FEFP_Conference_Report.pdf

[11] The 2015-2016 Level 4 cost factor is 3.613 and the Level 5 cost factor is 5.258.

[12] Florida Legislature, Conference Report on SB 2500-A, *Public School Funding: The Florida Education Finance Program (FEFP)* available at http://flsenate.gov/PublishedContent/Session/2015A/Appropriations/Documents/FEFP_Conference_Report.pdf

[13] Section 1011.62 (1)(e)2, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 1166 has no impact on state funds. However, individual school districts may experience an increase or decrease in their ESE Guaranteed Allocation based on the results of the October FTE survey.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1011.62 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Gaetz

1-01356A-16 20161166__

A bill to be entitled

An act relating to education funding; amending s. 1011.62, F.S.; revising the calculation for certain supplemental funds for exceptional student education programs; requiring the funds to be prorated under certain circumstances; providing an effective date.

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

Section 1. 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 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

1-01356A-16 20161166__

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.

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 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)(l) and rules of the State Board of Education, which shall be allocated initially ~~annually~~ to each school district in the amount provided in the General Appropriations Act. These funds shall be supplemental ~~in addition~~ to the funds appropriated for the basic funding level

~~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 once during the year, based on actual student membership from the October FTE survey. Upon recalculation, if the generated allocation is greater than the amount provided in the General Appropriations Act, the total shall be prorated to the level of the appropriation based on each district's share of the total recalculated amount. 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.

Section 2. This act shall take effect July 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 Appropriations

BILL:	PCS/SB 1170 (899852)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Banking and Insurance Committee; and Senator Detert
SUBJECT:	Health Plan Regulatory Administration
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1170 revises provisions in the Insurance Code and other Florida Statutes that conflict with the federal Patient Protection and Affordable Care Act (PPACA) and provides other changes. These changes include:

- Eliminates provisions relating to preexisting condition exclusions since the federal act requires guaranteed issue of coverage and prohibits preexisting condition exclusions;
- Removes the requirement that insurers provide an outline of coverage for individual or family accident and health insurance policies;
- Requires insurers to provide an outline of coverage for a large group policy or policy offering excepted benefits;
- Eliminates provisions relating to medical loss ratios since the federal act prescribes such standards and requires rebates if certain conditions are met;
- Eliminates the requirement for insurers to issue certificates of creditable coverage; and
- Provides technical and conforming changes.

The bill has no fiscal impact.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Federal Patient Protection and Affordable Care Act (PPACA)

The federal Patient Protection and Affordable Care Act was signed into law on March 23, 2010.[1] The federal law made significant changes to the U.S. health care system such as providing requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements, including required benefits, rating and underwriting standards, required review of rate increases, establishing and reporting of medical loss ratios and payment of rebates, covering adult dependents, internal and external appeals of adverse benefit determinations, and other requirements on individual and group coverage.[2] All health insurance coverage sold in the individual and group market must include the benefits in the essential health benefits benchmark with some exceptions. Excepted benefits are not subject to these requirements.[3]

Generally, health insurance is divided into two types of coverage: major medical coverage and excepted benefits. The PPACA regulates major medical, also known as comprehensive health insurance. Health insurance that provides benefits on a limited or ancillary basis have been referred to as excepted benefits. The Florida Insurance Code delineates the excepted benefits in s. 627.6561(5)(b), F.S. Excepted benefits include coverage such as limited scope dental, hospital indemnity, and specified disease coverage.

Guaranteed Availability and Renewability of Coverage

Individual major medical health maintenance organization (HMO) coverage is guaranteed issue and renewable. That is, the PPACA requires health insurers to accept every individual and every employer that applies for coverage, commonly referred to as offering coverage on a guaranteed-issue basis. The PPACA also requires health insurers to renew or continue in force the coverage with exceptions.[4] In Florida, this requirement is found in s. 627.6425(1), F.S., and applies to coverage defined in s. 627.6561(5)(a)2., F.S., which includes insurer policies and HMO contracts.

Grandfathered Health Plans

The PPACA exempts "grandfathered health plan coverage" from many of its insurance requirements (as specified in the summary of the key insurance provisions, below). For an insured plan, grandfathered health plan coverage is group or individual coverage in which an individual was enrolled on March 23, 2010, subject to conditions for maintaining grandfathered status as specified by law and rule.[5] Grandfathered health plan coverage is tied to the individual

1 On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA.

[2] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.).

[3] 42 U.S.C. s. 300gg-91.

[4] 45 C.F.R. s. 147.104 and 45 C.F.R. s. 147.106.

[5] PPACA s. 1251; 42 U.S.C. s. 18011 and 45 C.F.R. s. 147.140.

or employer who obtained the coverage, not to the policy or contract form itself. An insurer may have both policyholders with grandfathered coverage and policyholders with non-grandfathered coverage insured under the same policy form, depending on whether the coverage was effective before or after March 23, 2010. The conditions for maintaining grandfathered status are specified in the rule.

Medical Loss Ratio and Payment of Rebates

Effective for plan years beginning January 1, 2011, the PPACA requires health insurers to report to the federal Department of Health and Human Services (HHS) information concerning the percent of premium revenue spent on claims for clinical services and activities. This percentage is also known as the medical loss ratio, or MLR. Insurers must provide a rebate to consumers if the MLR is less than 85 percent in the large group market and 80 percent in the small group and individual markets.[6] Grandfathered health plans are not exempt from this requirement. Florida law requires as a condition of prior approval of rates by the Office of Insurance Regulation[7] (OIR) that the projected minimum loss ratio for small group and individual policies is 65 percent,[8] and rebates are not required if the MLR is not met. The calculation of Florida's MLR is not consistent with federal regulations.

Summary of Benefits and Coverage

The PPACA directs the HHS and the U.S. Department of the Treasury to develop standards for insurers and HMOs to use in compiling and providing a summary of benefits and coverage (SBC) that ''accurately describes the benefits and coverage under the applicable plan or coverage.'' On June 16, 2015, the HHS issued final rules relating to the summary of benefits and coverage disclosures that insurers and HMOs are required to provide for individual and group coverage. Section 627.6482, F.S., requires insurers to provide an outline of coverage for individuals and family accident and health policies.

Preexisting Conditions and Certificates of Coverage

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)[9] was enacted to provide guaranteed availability of coverage for certain employees and individuals, and to increase portability through the limitation of preexisting condition exclusions. Generally, group plans were allowed to impose a preexisting condition exclusion for up to 18 months after the enrollment date. The exclusion period could be reduced by the aggregate periods of creditable coverage applicable to the individual as of the enrollment date. Creditable coverage included group health plan and other specified coverage. Creditable coverage did not include excepted benefits. In 1997,[10] Florida adopted many of the requirements of HIPAA, which, in part, is codified in s. 627.6561, F.S.

Insurers were required to issue certificates of creditable coverage to individuals switching from

[6] 45 C.F.R. part 158.
7 Florida's Office of Insurance Regulation licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.
[8] Section 627.411(3)(a), F.S.
[9] Pub.L. 104–191.
[10] Ch. 97-179, Laws of Fla.

one health insurance plan to another that would allow the individual to mitigate or avoid preexisting condition exclusions. Effective December 31, 2014, certificates of creditable coverage are no longer required to be provided. After December 31, 2014, most health insurance plans will no longer contain preexisting condition exclusions because of the PPACA.[11]

Florida Kidcare Program

The Florida Kidcare Program[12] (Kidcare) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997. The Florida Kidcare program was created to provide a defined set of health benefits to uninsured, low-income children through the establishment of a variety of affordable health benefits coverage options from which families may select coverage and through which families may contribute financially to the health care of their children.[13]

III. Effect of Proposed Changes:

Section 1 amends s. 408.909, F.S., to revise a cross-references to excepted benefits and limited benefits, which are amended in the bill.

Section 2 amends s. 409.817, F.S., relating to Kidcare, to eliminate an exception to the prohibition on preexisting condition exclusions, since PPACA prohibits such exclusions.

Sections 3 and 4 amends ss. 624.123 and 627.402, F.S., to revise cross-references to sections amended by the bill.

Section 5 repeals subsection (3) of s. 627.411, F.S. The bill removes a ground for disapproval of a major medical health insurance policy for failure to meet a 65 percent medical loss ratio and removes the definition of incurred claims. The PPACA requires major medical health insurance to have an 80 percent loss ratio.

Sections 6 and 7 amend ss. 627.6011 and 627.602, F.S. to update cross-references to sections amended by the bill.

Section 8 amends s. 627.642, F.S., to eliminate the requirement that insurers provide an outline of coverage for individual or family accident and health insurance policies. Instead, insurers are required to provide an outline of coverage for a large group policy or policy offering excepted benefits. The PPACA requires a summary of benefits be included in individual and small group major medical policies.

Section 9 amends s. 627.6425, F.S., to remove the guaranteed renewable requirements for individual HMO major medical policies. Currently, s. 627.6425(1), F.S., applies to health insurance coverage as defined in s. 627.6561(5)(a)2., F.S., which includes HMO contracts. Additionally, the only guaranteed renewable statute in the HMO chapter is s. 641.31074, F.S.,

[11] 45 C.F.R. 148.124.
[12] See http://floridakidcare.org/#eligible (last visited Jan. 23, 2016).
[13] Section 409.812, F.S.

but it only applies to group health insurance. The bill deletes the reference to s. 627.6561(5)(a)2., F.S., and refers to s. 624.603, F.S., which includes the definition of health insurance.

Section 10 amends s. 627.6487, F.S., to update cross-references to sections amended by the bill.

Section 11 repeals s. 627.64871, F.S., which relates to creditable coverage and the issuance of certifications of coverage by insurers, since PPACA prohibits preexisting condition exclusions and such certificates are no longer needed.

Section 12 amends s. 627.6512, F.S., relating to the exemption of certain policies from regulations imposed on health insurance policies, to update cross-references to sections amended by the bill.

Section 13 amends s. 627.6513, F.S., to delineate excepted benefits and provide that excepted benefits do not apply to group policies.

Section 14 amends s. 627.6561, F.S., to delete provisions relating to creditable coverage and to update cross-references to sections amended by the bill.

Section 15 amends s. 627.6562, F.S., relating to dependent coverage, to provide a definition of creditable coverage, which delineates what type of coverage qualifies as "creditable coverage" and what coverage does not qualify as creditable. These provisions are currently delineated in s. 627.6561, F.S., which is being repealed by the bill.

Section 16 amends s. 727.65626, F.S., to update a cross-reference to sections amended by the bill.

Section 17 amends s. 627.6699, F.S., to revise a cross-reference to excepted benefits, which is amended by the bill. The section also provide a definition of "late enrollee" and eliminates provisions relating to creditable coverage.

Section 18 amends s. 627.6741, F.S., to update cross-references to sections amended by the bill.

Section 19 amends s. 641.31, F.S. to delete a provision that exempts individual or large group HMO contracts from any law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments. Federal law establishes deductibles and annual and lifetime limits and provides that copayments are not allowed for certain essential health benefits.

Section 20 amends s. 641.31071, F.S., to delete provisions relating to creditable coverage and to update cross-references to sections amended by the bill.

Section 21 amends s. 641.31074, F.S., to revise provisions relating to the guaranteed renewability of health maintenance organization coverage to conform to changes made under the bill.

Section 22 amends s. 641.312, F.S., to update a cross-reference to a section amended by the bill.

Section 23 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 5 of PCS/SB 1170 deletes s. 627.411(3)(a)-(b), F.S. According to the OIR, only paragraph (3)(a) needs to be deleted. The elimination of paragraph (3)(b) removes the definition of incurred claims, which is needed by OIR to review a company's request for rating action (increase or decrease), and therefore paragraph (3)(b) needs to be retained.[14]

VII. Related Issues:

The effective date of the bill is July 1, 2016. According to the Office of Insurance Regulation, implementing the bill in the middle of a plan year may create policyholder confusion and market disruption. Making these provisions effective at the beginning of the calendar year could avoid these negative outcomes.[15]

[14] Office of Insurance Regulation, 2016 Agency Legislative Bill Analysis, Jan. 13, 2016. (on file with Banking and Insurance Committee).
[15] *Id*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.909, 409.817, 624.123, 627.402, 627.411, 627.6011, 627.602, 627.642, 627.6425, 627.6487, 627.6512, 627.6513, 627.6561, 627.6562, 627.65626, 627.6699, 627.6741, 641.31, 641.31071, 641.31074, and 641.312.

This bill repeals the following section of the Florida Statutes: 627.64871.

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 February 11, 2016:
The committee substitute makes numerous technical corrections throughout the bill relating to preexisting conditions and creditable coverage. The PCS also provides for additional conforming changes to s. 641.31074, F.S., relating to the guaranteed renewability of health maintenance organization coverage.

CS by Banking and Insurance on January 26, 2016:
The CS reinstates provisions relating to HMO conversions and provides technical and conforming changes.

B. Amendments:

None.

880026

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Before line 69
insert:
Section 1. Paragraph (a) of subsection (2) of section 112.08, Florida Statutes, is amended to read:
112.08 Group insurance for public officers, employees, and certain volunteers; physical examinations.—
(2)(a) Notwithstanding any general law or special act to the contrary, every local governmental unit is authorized to

880026

provide and pay out of its available funds for all or part of the premium for life, health, accident, hospitalization, legal expense, or annuity insurance, or all or any kinds of such insurance, for the officers and employees of the local governmental unit and for health, accident, hospitalization, and legal expense insurance for the dependents of such officers and employees upon a group insurance plan and, to that end, to enter into contracts with insurance companies or professional administrators to provide such insurance or with a corporation not for profit whose membership consists entirely of local governmental units authorized to enter into risk management consortiums under this subsection. Before entering any contract for insurance, the local governmental unit shall advertise for competitive bids; and such contract shall be let upon the basis of such bids. If a contracting health insurance provider becomes financially impaired as determined by the Office of Insurance Regulation of the Financial Services Commission or otherwise fails or refuses to provide the contracted-for coverage or coverages, the local government may purchase insurance, enter into risk management programs, or contract with third-party administrators and may make such acquisitions by advertising for competitive bids or by direct negotiations and contract. The local governmental unit may undertake simultaneous negotiations with those companies which have submitted reasonable and timely bids and are found by the local governmental unit to be fully qualified and capable of meeting all servicing requirements. Each local governmental unit may self-insure any plan for health, accident, and hospitalization coverage or enter into a risk management consortium to provide such coverage, subject to

880026

approval based on actuarial soundness by the Office of Insurance Regulation; and each shall contract with an insurance company or professional administrator qualified and approved by the office or with a corporation not for profit whose membership consists entirely of local governmental units authorized to enter into a risk management consortium under this subsection to administer such a plan.

Between lines 118 and 119

insert:

Section 5. Paragraph (t) is added to subsection (1) of section 626.88, Florida Statutes, to read:

626.88 Definitions.—For the purposes of this part, the term:

(1) "Administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1) or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, other than any of the following persons:

(t) A corporation not for profit whose membership consists entirely of local governmental units authorized to enter into risk management consortiums under s. 112.08.

880026

A person who provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers shall comply with the provisions of ss. 627.6131, 641.3155, and 641.51(4).

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

And the title is amended as follows:

Delete lines 3 - 8

and insert:

administration; amending s. 112.08, F.S.; authorizing local governmental units to contract for certain group insurance with a corporation not for profit whose membership consists of specified local governmental units; adding such a corporation not for profit as an alternative entity that a local governmental unit must contract with to administer certain insurance plans; amending s. 408.909, F.S.; redefining the terms "health care coverage" and "health flex plan coverage"; amending s. 409.817, F.S.; deleting a provision authorizing group insurance plans to impose a certain preexisting condition exclusion; amending s. 624.123, F.S.; conforming a cross-reference; amending s. 626.88, F.S.; revising the definition of the term "administrator"; amending

620848

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete lines 183 - 184

and insert:

(14) may not ~~No individual or family accident and health insurance policy shall~~ be delivered, or issued


899852

576-03408-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to health plan regulatory administration; amending s. 408.909, F.S.; redefining the term "health care coverage" or "health flex plan coverage"; amending s. 409.817, F.S.; deleting a provision authorizing group insurance plans to impose a certain preexisting condition exclusion; amending s. 624.123, F.S.; conforming a cross-reference; amending s. 627.402, F.S.; redefining the term "nongrandfathered health plan"; amending s. 627.411, F.S.; deleting a provision relating to a minimum loss ratio standard for specified health insurance coverage; deleting provisions specifying certain incurred claims; amending s. 627.6011, F.S., conforming a cross-reference; amending s. 627.602, F.S.; conforming a cross-reference; amending s. 627.642, F.S.; revising the policies to which certain outline of coverage requirements apply; amending s. 627.6425, F.S.; redefining the term "individual health insurance"; revising applicability; amending s. 627.6487, F.S.; redefining terms; repealing s. 627.64871, F.S., relating to certification of coverage; amending s. 627.6512, F.S.; revising a provision specifying that certain sections of the Florida Insurance Code do not apply to a group health insurance policy as that policy relates to specified benefits, under certain circumstances; amending s.


899852

576-03408-16

627.6513, F.S.; excluding applicability as to certain types of benefits or coverages; amending s. 627.6561, F.S.; conforming a cross-reference; revising conditions under which an insurer may impose a preexisting condition exclusion; deleting the definition of the term "creditable coverage"; removing certain requirements relating to creditable coverage to conform to changes made by the act; amending s. 627.6562, F.S.; redefining the term "creditable coverage"; providing exceptions and applicability; amending s. 627.65626, F.S.; conforming a cross-reference; amending s. 627.6699, F.S.; redefining terms; deleting a provision that requires a certain health benefit plan to comply with specified preexisting condition provisions; amending s. 627.6741, F.S.; conforming cross-references; conforming a provision to changes made by the act; amending s. 641.31, F.S.; deleting a provision specifying that a law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments may not apply to a certain health maintenance organization contract; conforming a cross-reference; amending s. 641.31071, F.S.; conforming a cross-reference; deleting the definition of the term "creditable coverage"; removing certain requirements relating to creditable coverage to conform to changes made by the act; amending s. 641.31074; requiring a health maintenance organization that issues a health insurance contract, rather than a

899852

576-03408-16

group health insurance contract, to renew or continue in force such coverage at the contract holder's option; revising conditions under which a health maintenance organization may discontinue offering a particular contract form; adding to the conditions under which a health maintenance organization may, at the time of coverage renewal, modify coverage for a product offered; amending s. 641.312, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 408.909, Florida Statutes, is amended to read:

408.909 Health flex plans.—

(2) DEFINITIONS.—As used in this section, the term:

(d) "Health care coverage" or "health flex plan coverage" means health care services that are covered as benefits under an approved health flex plan or that are otherwise provided, either directly or through arrangements with other persons, via a health flex plan on a prepaid per capita basis or on a prepaid aggregate fixed-sum basis. The terms may also include one or more of the excepted benefits under s. 627.6513(1)-(13) ~~s. 627.6561(5)(b), the benefits under s. 627.6561(5)(c), if offered separately, or the benefits under s. 627.6561(5)(d), if offered as independent, noncoordinated benefits~~.

Section 2. Section 409.817, Florida Statutes, is amended to read:

409.817 Approval of health benefits coverage; financial

899852

576-03408-16

assistance.—In order for health insurance coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.821, the health benefits coverage must:

(1) Be certified by the Office of Insurance Regulation of the Financial Services Commission under s. 409.818 as meeting, exceeding, or being actuarially equivalent to the benchmark benefit plan;

(2) Be guarantee issued;

(3) Be community rated;

(4) Not impose any preexisting condition exclusion for covered benefits; ~~however, group health insurance plans may permit the imposition of a preexisting condition exclusion, but only insofar as it is permitted under s. 627.6561;~~

(5) Comply with the applicable limitations on premiums and cost sharing in s. 409.816;

(6) Comply with the quality assurance and access standards developed under s. 409.820; and

(7) Establish periodic open enrollment periods, which may not occur more frequently than quarterly.

Section 3. Paragraph (b) of subsection (1) of section 624.123, Florida Statutes, is amended to read:

624.123 Certain international health insurance policies; exemption from code.—

(1) International health insurance policies and applications may be solicited and sold in this state at any international airport to a resident of a foreign country. Such international health insurance policies shall be solicited and sold only by a licensed health insurance agent and underwritten only by an admitted insurer. For purposes of this subsection:


899852

576-03408-16

(b) "International health insurance policy" means health insurance, as provided ~~defined~~ in s. 627.6562(3)(a)2. ~~s. 627.6561(5)(a)2.~~, which is offered to an individual, covering only a resident of a foreign country on an annual basis.

Section 4. Subsection (2) of section 627.402, Florida Statutes, is amended to read:

627.402 Definitions.—As used in this part, the term:

(2) "Nongrandfathered health plan" is a health insurance policy or health maintenance organization contract that is not a grandfathered health plan and does not provide the benefits or coverages specified under s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(c)~~.

Section 5. Subsection (3) of section 627.411, Florida Statutes, is amended to read:

627.411 Grounds for disapproval.—

~~(3)(a) For health insurance coverage as described in s. 627.6561(5)(a)2., the minimum loss ratio standard of incurred claims to earned premium for the form shall be 65 percent.~~

~~(b) Incurred claims are claims occurring within a fixed period, whether or not paid during the same period, under the terms of the policy period.~~

~~1. Claims include scheduled benefit payments or services provided by a provider or through a provider network for dental, vision, disability, and similar health benefits.~~

~~2. Claims do not include state assessments, taxes, company expenses, or any expense incurred by the company for the cost of adjusting and settling a claim, including the review, qualification, oversight, management, or monitoring of a claim or incentives or compensation to providers for other than the~~


899852

576-03408-16

~~provisions of health care services.~~

~~3. A company may at its discretion include costs that are demonstrated to reduce claims, such as fraud intervention programs or case management costs, which are identified in each filing, are demonstrated to reduce claims costs, and do not result in increasing the experience period loss ratio by more than 5 percent.~~

~~4. For scheduled claim payments, such as disability income or long-term care, the incurred claims shall be the present value of the benefit payments discounted for continuance and interest.~~

Section 6. Section 627.6011, Florida Statutes, is amended to read:

627.6011 Mandated coverages.—Mandatory health benefits regulated under this chapter are not intended to apply to the types of health benefit plans listed in s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(c)~~, issued in any market, unless specifically designated otherwise. For purposes of this section, the term "mandatory health benefits" means those benefits set forth in ss. 627.6401-627.64193, and any other mandatory treatment or health coverages or benefits enacted on or after July 1, 2012.

Section 7. Paragraph (h) of subsection (1) of section 627.602, Florida Statutes, is amended to read:

627.602 Scope, format of policy.—

(1) Each health insurance policy delivered or issued for delivery to any person in this state must comply with all applicable provisions of this code and all of the following requirements:

(h) Section 641.312 and the provisions of the Employee

Retirement Income Security Act of 1974, as implemented by 29 C.F.R. s. 2560.503-1, relating to internal grievances. This paragraph does not apply to a health insurance policy that is subject to the Subscriber Assistance Program under s. 408.7056 or to the types of benefits or coverages provided under s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(c)~~ issued in any market.

Section 8. Subsection (1) of section 627.642, Florida Statutes, is amended to read:

627.642 Outline of coverage.—

(1) A policy offering benefits defined in s. 627.6513(1)-(14) or a large group ~~No individual or family accident and health insurance~~ policy may not ~~shall~~ be delivered, or issued for delivery, in this state unless:

(a) It is accompanied by an appropriate outline of coverage; or

(b) An appropriate outline of coverage is completed and delivered to the applicant at the time application is made, and an acknowledgment of receipt or certificate of delivery of such outline is provided to the insurer with the application.

In the case of a direct response, such as a written application to the insurance company from an applicant, the outline of coverage shall accompany the policy when issued.

Section 9. Subsections (1), (6), and (7) of section 627.6425, Florida Statutes, are amended, to read:

627.6425 Renewability of individual coverage.—

(1) Except as otherwise provided in this section, an insurer that provides individual health insurance coverage to an individual shall renew or continue in force such coverage at the

option of the individual. For the purpose of this section, the term "individual health insurance" means health insurance coverage, as described in s. 624.603 ~~s. 627.6561(5)(a)2.~~, offered to an individual in this state, including certificates of coverage offered to individuals in this state as part of a group policy issued to an association outside this state, but the term does not include short-term limited duration insurance or excepted benefits specified in s. 627.6513(1)-(14) ~~subsection (6) or subsection (7)~~.

~~(6) The requirements of this section do not apply to any health insurance coverage in relation to its provision of excepted benefits described in s. 627.6561(5)(b).~~

~~(7) The requirements of this section do not apply to any health insurance coverage in relation to its provision of excepted benefits described in s. 627.6561(5)(c), (d), or (e), if the benefits are provided under a separate policy, certificate, or contract of insurance.~~

Section 10. Paragraph (b) of subsection (2) and subsection (3) of section 627.6487, Florida Statutes, are amended to read:

627.6487 Guaranteed availability of individual health insurance coverage to eligible individuals.—

(2) For the purposes of this section:

(b) "Individual health insurance" means health insurance, as defined in s. 624.603 ~~s. 627.6561(5)(a)2.~~, which is offered to an individual, including certificates of coverage offered to individuals in this state as part of a group policy issued to an association outside this state, but the term does not include short-term limited duration insurance or excepted benefits specified in s. 627.6513(1)-(14) ~~s. 627.6561(5)(b) or, if the~~

~~benefits are provided under a separate policy, certificate, or contract, the term does not include excepted benefits specified in s. 627.6561(5)(c), (d), or (e)~~.

(3) For the purposes of this section, the term "eligible individual" means an individual:

(a)1. For whom, as of the date on which the individual seeks coverage under this section, the aggregate of the periods of creditable coverage, as defined in s. 627.6562(3) ~~s. 627.6561(5) and (6)~~, is 18 or more months; and

2.a. Whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan, or health insurance coverage offered in connection with any such plan; or

b. Whose most recent prior creditable coverage was under an individual plan issued in this state by a health insurer or health maintenance organization, which coverage is terminated due to the insurer or health maintenance organization becoming insolvent or discontinuing the offering of all individual coverage in the State of Florida, or due to the insured no longer living in the service area in the State of Florida of the insurer or health maintenance organization that provides coverage through a network plan in the State of Florida;

(b) Who is not eligible for coverage under:

1. A group health plan, as defined in s. 2791 of the Public Health Service Act;

2. A conversion policy or contract issued by an authorized insurer or health maintenance organization under s. 627.6675 or s. 641.3921, respectively, offered to an individual who is no longer eligible for coverage under either an insured or self-

insured employer plan;

3. Part A or part B of Title XVIII of the Social Security Act; or

4. A state plan under Title XIX of such act, or any successor program, and does not have other health insurance coverage;

(c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) was not terminated based on a factor described in s. 627.6571(2)(a) or (b), relating to nonpayment of premiums or fraud, unless such nonpayment of premiums or fraud was due to acts of an employer or person other than the individual;

(d) Who, having been offered the option of continuation coverage under a COBRA continuation provision or under s. 627.6692, elected such coverage; and

(e) Who, if the individual elected such continuation provision, has exhausted such continuation coverage under such provision or program.

Section 11. Section 627.64871, Florida Statutes, is repealed.

Section 12. Section 627.6512, Florida Statutes, is amended to read:

627.6512 Exemption of certain group health insurance policies.—Sections 627.6561, 627.65615, 627.65625, and 627.6571 do not apply to~~:~~

~~(1)~~ any group insurance policy in relation to its provision of ~~excepted~~ benefits described in s. 627.6513(1)-(14) ~~627.6561(5)(b)~~.

~~(2) Any group health insurance policy in relation to its~~

~~provision of excepted benefits described in s. 627.6561(5)(c), if the benefits:~~

~~(a) Are provided under a separate policy, certificate, or contract of insurance; or~~

~~(b) Are otherwise not an integral part of the policy.~~

~~(3) Any group health insurance policy in relation to its provision of excepted benefits described in s. 627.6561(5)(d), if all of the following conditions are met:~~

~~(a) The benefits are provided under a separate policy, certificate, or contract of insurance;~~

~~(b) There is no coordination between the provision of such benefits and any exclusion of benefits under any group policy maintained by the same policyholder; and~~

~~(c) Such benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health policy maintained by the same policyholder.~~

~~(4) Any group health policy in relation to its provision of excepted benefits described in s. 627.6561(5)(c), if the benefits are provided under a separate policy, certificate, or contract of insurance.~~

Section 13. Section 627.6513, Florida Statutes, is amended to read:

627.6513 Scope.—Section 641.312 and the provisions of the Employee Retirement Income Security Act of 1974, as implemented by 29 C.F.R. s. 2560.503-1, relating to internal grievances, apply to all group health insurance policies issued under this part. This section does not apply to a group health insurance policy that is subject to the Subscriber Assistance Program in

s. 408.7056 or to: ~~the types of benefits or coverages provided under s. 627.6561(5)(b)-(c) issued in any market.~~

(1) Coverage only for accident insurance, or disability income insurance, or any combination thereof.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical payment insurance.

(6) Credit-only insurance.

(7) Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.

(8) Other similar insurance coverage, specified in rules adopted by the commission, under which benefits for medical care are secondary or incidental to other insurance benefits. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(9) Limited scope dental or vision benefits, if offered separately.

(10) Benefits for long-term care, nursing home care, home health care, or community-based care, or any combination thereof, if offered separately.

(11) Other similar, limited benefits, if offered separately, as specified in rules adopted by the commission.

(12) Coverage only for a specified disease or illness, if offered as independent, noncoordinated benefits.

(13) Hospital indemnity or other fixed indemnity insurance, if offered as independent, noncoordinated benefits.

576-03408-16

(14) Benefits provided through a Medicare supplemental health insurance policy, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, and similar supplemental coverage provided to coverage under a group health plan, which are offered as a separate insurance policy and as independent, noncoordinated benefits.

Section 14. Section 627.6561, Florida Statutes, is amended to read:

627.6561 Preexisting conditions.—

(1) As used in this section, the term:

(a) "Enrollment date" means, with respect to an individual covered under a group health policy, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period of such enrollment.

(b) "Late enrollee" means, with respect to coverage under a group health policy, a participant or beneficiary who enrolls under the policy other than during:

1. The first period in which the individual is eligible to enroll under the policy.

2. A special enrollment period, as provided under s. 627.65615.

(c) "Waiting period" means, with respect to a group health policy and an individual who is a potential participant or beneficiary of the policy, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the policy.

(2) Subject to the exceptions specified in subsection (4), an insurer that offers group health insurance coverage may, with

576-03408-16

respect to a participant or beneficiary, impose a preexisting condition exclusion only if:

(a) Such exclusion relates to a physical or mental condition, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;

(b) Such exclusion extends for a period of not more than 12 months, or 18 months in the case of a late enrollee, after the enrollment date; and

(c) The period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage, as defined in s. 627.6562(3) ~~subsection (5)~~, applicable to the participant or beneficiary as of the enrollment date.

(3) Genetic information may not be treated as a condition described in paragraph (2)(a) in the absence of a diagnosis of the condition related to such information.

(4)(a) Subject to paragraph (b), an insurer that offers group health insurance coverage may not impose any preexisting condition exclusion in the case of:

1. An individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

2. A child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This provision does not apply to coverage before the date of such


899852

576-03408-16

adoption or placement for adoption.

3. Pregnancy.

(b) Subparagraphs 1. and 2. do not apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

~~(5)(a) The term, "creditable coverage," means, with respect to an individual, coverage of the individual under any of the following:~~

~~1. A group health plan, as defined in s. 2791 of the Public Health Service Act.~~

~~2. Health insurance coverage consisting of medical care, provided directly, through insurance or reimbursement, or otherwise and including terms and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.~~

~~3. Part A or part B of Title XVIII of the Social Security Act.~~

~~4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under s. 1928.~~

~~5. Chapter 55 of Title 10, United States Code.~~

~~6. A medical care program of the Indian Health Service or of a tribal organization.~~

~~7. The Florida Comprehensive Health Association or another state health benefit risk pool.~~

~~8. A health plan offered under chapter 89 of Title 5, United States Code.~~

~~9. A public health plan as defined by rules adopted by the~~


899852

576-03408-16

~~commission. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~10. A health benefit plan under s. 5(c) of the Peace Corps Act (22 U.S.C. s. 2504(c)).~~

~~(b) Creditable coverage does not include coverage that consists solely of one or more or any combination thereof of the following excepted benefits:~~

~~1. Coverage only for accident, or disability income insurance, or any combination thereof.~~

~~2. Coverage issued as a supplement to liability insurance.~~

~~3. Liability insurance, including general liability insurance and automobile liability insurance.~~

~~4. Workers' compensation or similar insurance.~~

~~5. Automobile medical payment insurance.~~

~~6. Credit-only insurance.~~

~~7. Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.~~

~~8. Other similar insurance coverage, specified in rules adopted by the commission, under which benefits for medical care are secondary or incidental to other insurance benefits. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~(c) The following benefits are not subject to the creditable coverage requirements, if offered separately:~~

~~1. Limited scope dental or vision benefits.~~

~~2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.~~

~~3. Such other similar, limited benefits as are specified in rules adopted by the commission.~~

~~(d) The following benefits are not subject to creditable coverage requirements if offered as independent, noncoordinated benefits:~~

~~1. Coverage only for a specified disease or illness.~~

~~2. Hospital indemnity or other fixed indemnity insurance.~~

~~(c) Benefits provided through a Medicare supplemental health insurance, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan are not considered creditable coverage if offered as a separate insurance policy.~~

~~(6)(a) A period of creditable coverage may not be counted, with respect to enrollment of an individual under a group health plan, if, after such period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.~~

~~(b) Any period during which an individual is in a waiting period for any coverage under a group health plan or for group health insurance coverage may not be taken into account in determining the 63-day period under paragraph (a) or paragraph (4)(b).~~

~~(7)(a) Except as otherwise provided under paragraph (b), an insurer shall count a period of creditable coverage without regard to the specific benefits covered under the period.~~

~~(b) An insurer may elect to count, as creditable coverage, coverage of benefits within each of several classes or~~

~~categories of benefits specified in rules adopted by the commission rather than as provided under paragraph (a). To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services. Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election, an insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.~~

~~(c) In the case of an election with respect to an insurer under paragraph (b), the insurer shall:~~

~~1. Prominently state in 10-point type or larger in any disclosure statements concerning the policy, and state to each certificateholder at the time of enrollment under the policy, that the insurer has made such election; and~~

~~2. Include in such statements a description of the effect of this election.~~

~~(8)(a) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in this subsection or in such other manner as is specified in rules adopted by the commission. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~(b) An insurer that offers group health insurance coverage shall provide the certification described in paragraph (a):~~

~~1. At the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision or continuation pursuant to s. 627.6692.~~

~~2. In the case of an individual becoming covered under a COBRA continuation provision or pursuant to s. 627.6692, at the time the individual ceases to be covered under such a provision.~~

~~3. Upon the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in this paragraph.~~

~~The certification under subparagraph 1. may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision or continuation pursuant to s. 627.6692.~~

~~(c) The certification described in this section is a written certification that must include:~~

~~1. The period of creditable coverage of the individual under the policy and the coverage, if any, under such COBRA continuation provision or continuation pursuant to s. 627.6692; and~~

~~2. The waiting period, if any, imposed with respect to the individual for any coverage under such policy.~~

~~(d) In the case of an election described in subsection (7) by an insurer, if the insurer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual, as provided in this subsection:~~

~~1. Upon request of such insurer, the insurer that issued the certification provided by the individual shall promptly disclose to such requesting plan or insurer information on coverage of classes and categories of health benefits available under such insurer's plan or coverage.~~

~~2. Such insurer may charge the requesting insurer for the~~

~~reasonable cost of disclosing such information.~~

~~(c) The commission shall adopt rules to prevent an insurer's failure to provide information under this subsection with respect to previous coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health insurance coverage. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~(9)(a) Except as provided in paragraph (b), no period before July 1, 1996, shall be taken into account in determining creditable coverage.~~

~~(b) The commission shall adopt rules that provide a process whereby individuals who need to establish creditable coverage for periods before July 1, 1996, and who would have such coverage credited but for paragraph (a), may be given credit for creditable coverage for such periods through the presentation of documents or other means. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~(10) Except as otherwise provided in this subsection, paragraph (8)(b) applies to events that occur on or after July 1, 1996.~~

~~(a) In no case is a certification required to be provided under paragraph (8)(b) prior to June 1, 1997.~~

~~(b) In the case of an event that occurred on or after July 1, 1996, and before October 1, 1996, a certification is not required to be provided under paragraph (8)(b), unless an individual, with respect to whom the certification is required~~

576-03408-16

~~to be made, requests such certification in writing.~~

~~(11) In the case of an individual who seeks to establish creditable coverage for any period for which certification is not required because it relates to an event that occurred before July 1, 1996:~~

~~(a) The individual may present other creditable coverage in order to establish the period of creditable coverage.~~

~~(b) An insurer is not subject to any penalty or enforcement action with respect to the insurer's crediting, or not crediting, such coverage if the insurer has sought to comply in good faith with applicable provisions of this section.~~

~~(12) For purposes of subsection (9), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement of this section may not be treated as a termination of such collective bargaining agreement.~~

~~(13) This section does not apply to any health insurance coverage in relation to its provision of excepted benefits described in paragraph (5)(b).~~

~~(14) This section does not apply to any health insurance coverage in relation to its provision of excepted benefits described in paragraphs (5)(c), (d), or (e), if the benefits are provided under a separate policy, certificate, or contract of insurance.~~

~~(15) This section applies to health insurance coverage offered, sold, issued, renewed, or in effect on or after July 1, 1997.~~

Section 15. Subsection (3) of section 627.6562, Florida Statutes, is amended to read:

576-03408-16

627.6562 Dependent coverage.—

(3) If, pursuant to subsection (2), a child is provided coverage under the parent's policy after the end of the calendar year in which the child reaches age 25 and coverage for the child is subsequently terminated, the child is not eligible to be covered under the parent's policy unless the child was continuously covered by other creditable coverage without a gap in coverage of more than 63 days.

(a) For the purposes of this subsection, the term "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following: ~~has the same meaning as provided in s. 627.6561(5).~~

1. A group health plan, as defined in s. 2791 of the Public Health Service Act.

2. Health insurance coverage consisting of medical care provided directly through insurance or reimbursement or otherwise, and including terms and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.

3. Part A or part B of Title XVIII of the Social Security Act.

4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under s. 1928.

5. Title 10 U.S.C. chapter 55.

6. A medical care program of the Indian Health Service or of a tribal organization.

7. The Florida Comprehensive Health Association or another


899852

576-03408-16

state health benefit risk pool.

8. A health plan offered under 5 U.S.C. chapter 89.

9. A public health plan as defined by rules adopted by the commission. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

10. A health benefit plan under s. 5(e) of the Peace Corps Act, 22 U.S.C. s. 2504(e).

(b) Creditable coverage does not include coverage that consists of one or more, or any combination thereof, of the following excepted benefits:

1. Coverage only for accident insurance, or disability income insurance, or any combination thereof.

2. Coverage issued as a supplement to liability insurance.

3. Liability insurance, including general liability insurance and automobile liability insurance.

4. Workers' compensation or similar insurance.

5. Automobile medical payment insurance.

6. Credit-only insurance.

7. Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.

8. Other similar insurance coverage specified in rules adopted by the commission under which benefits for medical care are secondary or incidental to other insurance benefits. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(c) The following benefits are not subject to the creditable coverage requirements, if offered separately:


899852

576-03408-16

1. Limited scope dental or vision benefits.

2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

3. Other similar, limited benefits specified in rules adopted by the commission.

(d) The following benefits are not subject to creditable coverage requirements if offered as independent, noncoordinated benefits:

1. Coverage only for a specified disease or illness.

2. Hospital indemnity or other fixed indemnity insurance.

(e) Benefits provided through a Medicare supplemental health insurance policy, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, and similar supplemental coverage provided to coverage under a group health plan are not considered creditable coverage if offered as a separate insurance policy.

Section 16. Subsection (1) of section 627.65626, Florida Statutes, is amended to read:

627.65626 Insurance rebates for healthy lifestyles.—

(1) Any rate, rating schedule, or rating manual for a health insurance policy that provides creditable coverage as defined in s. 627.6562(3) ~~627.6561(5)~~ filed with the office shall provide for an appropriate rebate of premiums paid in the last policy year, contract year, or calendar year when the majority of members of a health plan have enrolled and maintained participation in any health wellness, maintenance, or improvement program offered by the group policyholder and health plan. The rebate may be based upon premiums paid in the last


899852

576-03408-16

calendar year or policy year. The group must provide evidence of demonstrative maintenance or improvement of the enrollees' health status as determined by assessments of agreed-upon health status indicators between the policyholder and the health insurer, including, but not limited to, reduction in weight, body mass index, and smoking cessation. The group or health insurer may contract with a third-party administrator to assemble and report the health status required in this subsection between the policyholder and the health insurer. Any rebate provided by the health insurer is presumed to be appropriate unless credible data demonstrates otherwise, or unless the rebate program requires the insured to incur costs to qualify for the rebate which equal or exceed the value of the rebate, but the rebate may not exceed 10 percent of paid premiums.

Section 17. Paragraphs (e) and (l) of subsection (3) and paragraph (d) of subsection (5) of section 627.6699, Florida Statutes, are amended to read:

627.6699 Employee Health Care Access Act.—

(3) DEFINITIONS.—As used in this section, the term:

(e) "Creditable coverage" has the same meaning as provided ~~ascribed~~ in s. 627.6562(3) ~~627.6561~~.

(l) "Late enrollee" means an eligible employee or dependent who, with respect to coverage under a group health policy, is a participant or beneficiary who enrolls under the policy other than during:

1. The first period in which the individual is eligible to enroll under the policy.

2. A special enrollment period, as provided under s.


899852

576-03408-16

627.65615 ~~as defined under s. 627.6561(1)(b)~~.

(5) AVAILABILITY OF COVERAGE.—

(d) A health benefit plan covering small employers, issued or renewed on or after January 1, 1994, must comply with the following conditions:

1. All health benefit plans must be offered and issued on a guaranteed-issue basis. Additional or increased benefits may only be offered by riders.

~~2. Paragraph (c) applies to health benefit plans issued to a small employer who has two or more eligible employees and to health benefit plans that are issued to a small employer who has fewer than two eligible employees and that cover an employee who has had creditable coverage continually to a date not more than 63 days before the effective date of the new coverage.~~

2.~~3.~~ For health benefit plans that are issued to a small employer who has fewer than two employees and that cover an employee who has not been continually covered by creditable coverage within 63 days before the effective date of the new coverage, preexisting condition provisions must not exclude coverage for a period beyond 24 months following the employee's effective date of coverage and may relate only to:

a. Conditions that, during the 24-month period immediately preceding the effective date of coverage, had manifested themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received; or

b. A pregnancy existing on the effective date of coverage.

Section 18. Subsection (1) and paragraph (c) of subsection

576-03408-16

(2) of section 627.6741, Florida Statutes, are amended to read:

627.6741 Issuance, cancellation, nonrenewal, and replacement.—

(1)(a) An insurer issuing Medicare supplement policies in this state shall offer the opportunity of enrolling in a Medicare supplement policy, without conditioning the issuance or effectiveness of the policy on, and without discriminating in the price of the policy based on, the medical or health status or receipt of health care by the individual:

1. To any individual who is 65 years of age or older, or under 65 years of age and eligible for Medicare by reason of disability or end-stage renal disease, and who resides in this state, upon the request of the individual during the 6-month period beginning with the first month in which the individual has attained 65 years of age and is enrolled in Medicare Part B, or is eligible for Medicare by reason of a disability or end-stage renal disease, and is enrolled in Medicare Part B; or

2. To any individual who is 65 years of age or older, or under 65 years of age and eligible for Medicare by reason of a disability or end-stage renal disease, who is enrolled in Medicare Part B, and who resides in this state, upon the request of the individual during the 2-month period following termination of coverage under a group health insurance policy.

(b) The 6-month period to enroll in a Medicare supplement policy for an individual who is under 65 years of age and is eligible for Medicare by reason of disability or end-stage renal disease and otherwise eligible under subparagraph (a)1. or subparagraph (a)2. and first enrolled in Medicare Part B before October 1, 2009, begins on October 1, 2009.

576-03408-16

(c) A company that has offered Medicare supplement policies to individuals under 65 years of age who are eligible for Medicare by reason of disability or end-stage renal disease before October 1, 2009, may, for one time only, effect a rate schedule change that redefines the age bands of the premium classes without activating the period of discontinuance required by s. 627.410(6)(e)2.

(d) As a part of an insurer's rate filings, before and including the insurer's first rate filing for a block of policy forms in 2015, notwithstanding the provisions of s. 627.410(6)(e)3., an insurer shall consider the experience of the policies or certificates for the premium classes including individuals under 65 years of age and eligible for Medicare by reason of disability or end-stage renal disease separately from the balance of the block so as not to affect the other premium classes. For filings in such time period only, credibility of that experience shall be as follows: if a block of policy forms has 1,250 or more policies or certificates in force in the age band including ages under 65 years of age, full or 100-percent credibility shall be given to the experience; and if fewer than 250 policies or certificates are in force, no or zero-percent credibility shall be given. Linear interpolation shall be used for in-force amounts between the low and high values. Florida-only experience shall be used if it is 100-percent credible. If Florida-only experience is not 100-percent credible, a combination of Florida-only and nationwide experience shall be used. If Florida-only experience is zero-percent credible, nationwide experience shall be used. The insurer may file its initial rates and any rate adjustment based upon the experience


899852

576-03408-16

of these policies or certificates or based upon expected claim experience using experience data of the same company, other companies in the same or other states, or using data publicly available from the Centers for Medicaid and Medicare Services if the insurer's combined Florida and nationwide experience is not 100-percent credible, separate from the balance of all other Medicare supplement policies.

A Medicare supplement policy issued to an individual under subparagraph (a)1. or subparagraph (a)2. may not exclude benefits based on a preexisting condition if the individual has a continuous period of creditable coverage, as defined in s. 627.6562(3) ~~627.6561(5)~~, of at least 6 months as of the date of application for coverage.

(2) For both individual and group Medicare supplement policies:

(c) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate or creditable coverage as defined in s. 627.6562(3) ~~627.6561(5)~~, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy~~, subject to the requirements of s. 627.6561(6)-(11)~~.

Section 19. Subsection (2) and paragraph (a) of subsection (40) of section 641.31, Florida Statutes, are amended to read:

641.31 Health maintenance contracts.—

(2) The rates charged by any health maintenance


899852

576-03408-16

organization to its subscribers shall not be excessive, inadequate, or unfairly discriminatory or follow a rating methodology that is inconsistent, indeterminate, or ambiguous or encourages misrepresentation or misunderstanding. ~~A law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments shall not apply to any health maintenance organization contract that provides coverage as described in s. 641.31071(5)(a)2., offered or delivered to an individual or a group of 51 or more persons.~~ The commission, in accordance with generally accepted actuarial practice as applied to health maintenance organizations, may define by rule what constitutes excessive, inadequate, or unfairly discriminatory rates and may require whatever information it deems necessary to determine that a rate or proposed rate meets the requirements of this subsection.

(40)(a) Any group rate, rating schedule, or rating manual for a health maintenance organization policy, which provides creditable coverage as defined in s. 627.6562(3) ~~627.6561(5)~~, filed with the office shall provide for an appropriate rebate of premiums paid in the last policy year, contract year, or calendar year when the majority of members of a health plan are enrolled in and have maintained participation in any health wellness, maintenance, or improvement program offered by the group contract holder. The group must provide evidence of demonstrative maintenance or improvement of his or her health status as determined by assessments of agreed-upon health status indicators between the group and the health insurer, including, but not limited to, reduction in weight, body mass index, and smoking cessation. Any rebate provided by the health maintenance

576-03408-16

organization is presumed to be appropriate unless credible data demonstrates otherwise, or unless the rebate program requires the insured to incur costs to qualify for the rebate which equals or exceeds the value of the rebate but the rebate may not exceed 10 percent of paid premiums.

Section 20. Section 641.31071, Florida Statutes, is amended to read:

641.31071 Preexisting conditions.—

(1) As used in this section, the term:

(a) "Enrollment date" means, with respect to an individual covered under a group health maintenance organization contract, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period of such enrollment.

(b) "Late enrollee" means, with respect to coverage under a group health maintenance organization contract, a participant or beneficiary who enrolls under the contract other than during:

1. The first period in which the individual is eligible to enroll under the plan.

2. A special enrollment period, as provided under s. 641.31072.

(c) "Waiting period" means, with respect to a group health maintenance organization contract and an individual who is a potential participant or beneficiary under the contract, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the contract.

(2) Subject to the exceptions specified in subsection (4), a health maintenance organization that offers group coverage,

576-03408-16

may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if:

(a) Such exclusion relates to a physical or mental condition, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;

(b) Such exclusion extends for a period of not more than 12 months, or 18 months in the case of a late enrollee, after the enrollment date; and

(c) The period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage, as defined in s. 627.6562(3) ~~subsection (5)~~, applicable to the participant or beneficiary as of the enrollment date.

(3) Genetic information shall not be treated as a condition described in paragraph (2)(a) in the absence of a diagnosis of the condition related to such information.

(4)(a) Subject to paragraph (b), a health maintenance organization that offers group coverage may not impose any preexisting condition exclusion in the case of:

1. An individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

2. A child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This provision shall not apply to coverage before the date of such

adoption or placement for adoption.

3. Pregnancy.

(b) Subparagraphs (a)1. and 2. do not apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

~~(5)(a) The term "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:~~

~~1. A group health plan, as defined in s. 2791 of the Public Health Service Act.~~

~~2. Health insurance coverage consisting of medical care, provided directly, through insurance or reimbursement or otherwise, and including terms and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.~~

~~3. Part A or part B of Title XVIII of the Social Security Act.~~

~~4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under s. 1928.~~

~~5. Chapter 55 of Title 10, United States Code.~~

~~6. A medical care program of the Indian Health Service or of a tribal organization.~~

~~7. The Florida Comprehensive Health Association or another state health benefit risk pool.~~

~~8. A health plan offered under chapter 89 of Title 5, United States Code.~~

~~9. A public health plan as defined by rule of the commission. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~10. A health benefit plan under s. 5(c) of the Peace Corps Act (22 U.S.C. s. 2504(c)).~~

~~(b) Creditable coverage does not include coverage that consists solely of one or more or any combination thereof of the following excepted benefits:~~

~~1. Coverage only for accident, or disability income insurance, or any combination thereof.~~

~~2. Coverage issued as a supplement to liability insurance.~~

~~3. Liability insurance, including general liability insurance and automobile liability insurance.~~

~~4. Workers' compensation or similar insurance.~~

~~5. Automobile medical payment insurance.~~

~~6. Credit-only insurance.~~

~~7. Coverage for onsite medical clinics.~~

~~8. Other similar insurance coverage, specified in rules adopted by the commission, under which benefits for medical care are secondary or incidental to other insurance benefits. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~(c) The following benefits are not subject to the creditable coverage requirements, if offered separately;~~

~~1. Limited scope dental or vision benefits.~~

~~2. Benefits or long-term care, nursing home care, home health care, community-based care, or any combination of these.~~

~~3. Such other similar, limited benefits as are specified in rules adopted by the commission. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.~~

~~(d) The following benefits are not subject to creditable coverage requirements if offered as independent, noncoordinated benefits:~~

~~1. Coverage only for a specified disease or illness.~~

~~2. Hospital indemnity or other fixed indemnity insurance.~~

~~(c) Benefits provided through Medicare supplemental health insurance, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan are not considered creditable coverage if offered as a separate insurance policy.~~

~~(6)(a) A period of creditable coverage may not be counted, with respect to enrollment of an individual under a group health maintenance organization contract, if, after such period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.~~

~~(b) Any period during which an individual is in a waiting period, or in an affiliation period as defined in subsection (9), for any coverage under a group health maintenance organization contract may not be taken into account in determining the 63-day period under paragraph (a) or paragraph (4)(b).~~

~~(7)(a) Except as otherwise provided under paragraph (b), a~~

~~health maintenance organization shall count a period of creditable coverage without regard to the specific benefits covered under the period.~~

~~(b) A health maintenance organization may elect to count as creditable coverage, coverage of benefits within each of several classes or categories of benefits specified in rules adopted by the commission rather than as provided under paragraph (a). Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election, a health maintenance organization shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.~~

~~(c) In the case of an election with respect to a health maintenance organization under paragraph (b), the organization shall:~~

~~1. Prominently state in 10-point type or larger in any disclosure statements concerning the contract, and state to each enrollee at the time of enrollment under the contract, that the organization has made such election; and~~

~~2. Include in such statements a description of the effect of this election.~~

~~(8)(a) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in this subsection or in such other manner as may be specified in rules adopted by the commission.~~

~~(b) A health maintenance organization that offers group coverage shall provide the certification described in paragraph (a):~~

~~1. At the time an individual ceases to be covered under the~~

~~plan or otherwise becomes covered under a COBRA continuation provision or continuation pursuant to s. 627.6692.~~

~~2. In the case of an individual becoming covered under a COBRA continuation provision or pursuant to s. 627.6692, at the time the individual ceases to be covered under such a provision.~~

~~3. Upon the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in this paragraph.~~

~~The certification under subparagraph 1. may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision or continuation pursuant to s. 627.6692.~~

~~(c) The certification is a written certification of:~~

~~1. The period of creditable coverage of the individual under the contract and the coverage, if any, under such COBRA continuation provision or continuation pursuant to s. 627.6692; and~~

~~2. The waiting period, if any, imposed with respect to the individual for any coverage under such contract.~~

~~(d) In the case of an election described in subsection (7) by a health maintenance organization, if the organization enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual, as provided by this subsection:~~

~~1. Upon request of such health maintenance organization, the insurer or health maintenance organization that issued the certification provided by the individual shall promptly disclose to such requesting organization information on coverage of~~

~~classes and categories of health benefits available under such insurer's or health maintenance organization's plan or coverage.~~

~~2. Such insurer or health maintenance organization may charge the requesting organization for the reasonable cost of disclosing such information.~~

~~(e) The commission shall adopt rules to prevent an insurer's or health maintenance organization's failure to provide information under this subsection with respect to previous coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health maintenance organization coverage.~~

~~(9)(a) A health maintenance organization may provide for an affiliation period with respect to coverage through the organization only if:~~

~~1. No preexisting condition exclusion is imposed with respect to coverage through the organization;~~

~~2. The period is applied uniformly without regard to any health status-related factors; and~~

~~3. Such period does not exceed 2 months or 3 months in the case of a late enrollee.~~

~~(b) For the purposes of this section, the term "affiliation period" means a period that, under the terms of the coverage offered by the health maintenance organization, must expire before the coverage becomes effective. The organization is not required to provide health care services or benefits during such period, and no premium may be charged to the participant or beneficiary for any coverage during the period. Such period begins on the enrollment date and runs concurrently with any waiting period under the plan.~~

576-03408-16

~~(c) As an alternative to the method authorized by paragraph (a), a health maintenance organization may address adverse selection in a method approved by the office.~~

~~(10)(a) Except as provided in paragraph (b), no period before July 1, 1996, shall be taken into account in determining creditable coverage.~~

~~(b) The commission shall adopt rules that provide a process whereby individuals who need to establish creditable coverage for periods before July 1, 1996, and who would have such coverage credited but for paragraph (a), may be given credit for creditable coverage for such periods through the presentation of documents or other means.~~

~~(11) Except as otherwise provided in this subsection, the requirements of paragraph (8)(b) shall apply to events that occur on or after July 1, 1996.~~

~~(a) In no case is a certification required to be provided under paragraph (8)(b) prior to June 1, 1997.~~

~~(b) In the case of an event that occurs on or after July 1, 1996, and before October 1, 1996, a certification is not required to be provided under paragraph (8)(b), unless an individual, with respect to whom the certification is required to be made, requests such certification in writing.~~

~~(12) In the case of an individual who seeks to establish creditable coverage for any period for which certification is not required because it relates to an event occurring before July 1, 1996:~~

~~(a) The individual may present other creditable coverage in order to establish the period of creditable coverage.~~

~~(b) A health maintenance organization is not subject to any~~

576-03408-16

~~penalty or enforcement action with respect to the organization's crediting, or not crediting, such coverage if the organization has sought to comply in good faith with applicable provisions of this section.~~

~~(13) For purposes of subsection (10), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement of this section may not be treated as a termination of such collective bargaining agreement.~~

Section 21. Subsections (1), (3), and (4) of section 641.31074, Florida Statutes, are amended to read:

641.31074 Guaranteed renewability of coverage.—

(1) Except as otherwise provided in this section, a health maintenance organization that issues a ~~group~~ health insurance contract must renew or continue in force such coverage at the option of the contract holder.

(3)(a) A health maintenance organization may discontinue offering a particular contract form ~~for group coverage offered in the small group market or large group market~~ only if:

1. The health maintenance organization provides notice to each contract holder provided coverage of this form in such market, and participants and beneficiaries covered under such coverage, of such discontinuation at least 90 days prior to the date of the nonrenewal of such coverage;

2. The health maintenance organization offers to each contract holder provided coverage of this form in such market the option to purchase all, or in the case of the large group market, any other health insurance coverage currently being offered by the health maintenance organization in such market;


899852

576-03408-16

and

3. In exercising the option to discontinue coverage of this form and in offering the option of coverage under subparagraph 2., the health maintenance organization acts uniformly without regard to the claims experience of those contract holders or any health-status-related factor that relates to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.

(b)1. In any case in which a health maintenance organization elects to discontinue offering all coverage in the individual market, the small group market, ~~or~~ the large group market, or any combination thereof ~~both,~~ in this state, coverage may be discontinued by the insurer only if:

a. The health maintenance organization provides notice to the office and to each contract holder, and participants and beneficiaries covered under such coverage, of such discontinuation at least 180 days prior to the date of the nonrenewal of such coverage; and

b. All health insurance issued or delivered for issuance in this state in such market is discontinued and coverage under such health insurance coverage in such market is not renewed.

2. In the case of a discontinuation under subparagraph 1. in a market, the health maintenance organization may not provide for the issuance of any health maintenance organization contract coverage in the market in this state during the 5-year period beginning on the date of the discontinuation of the last insurance contract not renewed.

(4) At the time of coverage renewal, a health maintenance organization may modify the coverage for a product offered:


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(a) In the large group market; ~~or~~

(b) In the small group market if, for coverage that is available in such market other than only through one or more bona fide associations, as defined in s. 627.6571(5), such modification is consistent with s. 627.6699 and effective on a uniform basis among group health plans with that product; or

(c) In the individual market if the modification is consistent with the laws of this state and effective on a uniform basis among all individuals with that policy form.

Section 22. Section 641.312, Florida Statutes, is amended to read:

641.312 Scope.—The Office of Insurance Regulation may adopt rules to administer the provisions of the National Association of Insurance Commissioners' Uniform Health Carrier External Review Model Act, issued by the National Association of Insurance Commissioners and dated April 2010. This section does not apply to a health maintenance contract that is subject to the Subscriber Assistance Program under s. 408.7056 or to the types of benefits or coverages provided under s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(c)~~ issued in any market.

Section 23. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1170
INTRODUCER:	Banking and Insurance Committee and Senator Detert
SUBJECT:	Health Plan Regulatory Administration
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1170 revises provisions in the Insurance Code and other Florida Statutes that conflict with the federal Patient Protection and Affordable Care Act (PPACA) and provides other changes. These changes include:

- Eliminates provisions relating to preexisting condition exclusions since the federal act requires guaranteed issue of coverage and prohibits preexisting condition exclusions;
- Removes the requirement that insurers provide an outline of coverage for individual or family accident and health insurance policies;
- Requires insurers to provide an outline of coverage for a large group policy or policy offering excepted benefits;
- Eliminates provisions relating to medical loss ratios since the federal act prescribes such standards and requires rebates if certain conditions are met;
- Eliminates the requirement for insurers to issue certificates of creditable coverage; and
- Provides technical and conforming changes.

The bill has no fiscal impact.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Federal Patient Protection and Affordable Care Act (PPACA)

The federal Patient Protection and Affordable Care Act was signed into law on March 23, 2010.[1] The federal law made significant changes to the U.S. health care system such as providing requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements, including required benefits, rating and underwriting standards, required review of rate increases, establishing and reporting of medical loss ratios and payment of rebates, covering adult dependents, internal and external appeals of adverse benefit determinations, and other requirements on individual and group coverage.[2] All health insurance coverage sold in the individual and group market must include the benefits in the essential health benefits benchmark with some exceptions. Excepted benefits are not subject to these requirements.[3]

Generally, health insurance is divided into two types of coverage: major medical coverage and excepted benefits. The PPACA regulates major medical, also known as comprehensive health insurance. Health insurance that provides benefits on a limited or ancillary basis have been referred to as excepted benefits. The Florida Insurance Code delineates the excepted benefits in s. 627.6561(5)(b), F.S. Excepted benefits include coverage such as limited scope dental, hospital indemnity, and specified disease coverage.

Guaranteed Availability and Renewability of Coverage

Individual major medical health maintenance organization (HMO) coverage is guaranteed issue and renewable. That is, the PPACA requires health insurers to accept every individual and every employer that applies for coverage, commonly referred to as offering coverage on a guaranteed-issue basis. The PPACA also requires health insurers to renew or continue in force the coverage with exceptions.[4] In Florida, this requirement is found in s. 627.6425(1), F.S., and applies to coverage defined in s. 627.6561(5)(a)2., F.S., which includes insurer policies and HMO contracts.

Grandfathered Health Plans

The PPACA exempts "grandfathered health plan coverage" from many of its insurance requirements (as specified in the summary of the key insurance provisions, below). For an insured plan, grandfathered health plan coverage is group or individual coverage in which an individual was enrolled on March 23, 2010, subject to conditions for maintaining grandfathered status as specified by law and rule.[5] Grandfathered health plan coverage is tied to the individual

1 On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA.

[2] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.).

[3] 42 U.S.C. s. 300gg-91.

[4] 45 C.F.R. s. 147.104 and 45 C.F.R. s. 147.106.

[5] PPACA s. 1251; 42 U.S.C. s. 18011 and 45 C.F.R. s. 147.140.

or employer who obtained the coverage, not to the policy or contract form itself. An insurer may have both policyholders with grandfathered coverage and policyholders with non-grandfathered coverage insured under the same policy form, depending on whether the coverage was effective before or after March 23, 2010. The conditions for maintaining grandfathered status are specified in the rule.

Medical Loss Ratio and Payment of Rebates

Effective for plan years beginning January 1, 2011, the PPACA requires health insurers to report to the federal Department of Health and Human Services (HHS) information concerning the percent of premium revenue spent on claims for clinical services and activities. This percentage is also known as the medical loss ratio, or MLR. Insurers must provide a rebate to consumers if the MLR is less than 85 percent in the large group market and 80 percent in the small group and individual markets.[6] Grandfathered health plans are not exempt from this requirement. Florida law requires as a condition of prior approval of rates by the Office of Insurance Regulation[7] (OIR) that the projected minimum loss ratio for small group and individual policies is 65 percent,[8] and rebates are not required if the MLR is not met. The calculation of Florida's MLR is not consistent with federal regulations.

Summary of Benefits and Coverage

The PPACA directs the HHS and the U.S. Department of the Treasury to develop standards for insurers and HMOs to use in compiling and providing a summary of benefits and coverage (SBC) that ''accurately describes the benefits and coverage under the applicable plan or coverage.'' On June 16, 2015, the HHS issued final rules relating to the summary of benefits and coverage disclosures that insurers and HMOs are required to provide for individual and group coverage. Section 627.6482, F.S., requires insurers to provide an outline of coverage for individuals and family accident and health policies.

Preexisting Conditions and Certificates of Coverage

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)[9] was enacted to provide guaranteed availability of coverage for certain employees and individuals, and to increase portability through the limitation of preexisting condition exclusions. Generally, group plans were allowed to impose a preexisting condition exclusion for up to 18 months after the enrollment date. The exclusion period could be reduced by the aggregate periods of creditable coverage applicable to the individual as of the enrollment date. Creditable coverage included group health plan and other specified coverage. Creditable coverage did not include excepted benefits. In 1997,[10] Florida adopted many of the requirements of HIPAA, which, in part, is codified in s. 627.6561, F.S.

[6] 45 C.F.R. part 158.
7 Florida's Office of Insurance Regulation licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.
[8] Section 627.411(3)(a), F.S.
[9] Pub.L. 104–191.
[10] Ch. 97-179, Laws of Fla.

Insurers were required to issue certificates of creditable coverage to individuals switching from one health insurance plan to another that would allow the individual to mitigate or avoid preexisting condition exclusions. Effective December 31, 2014, certificates of creditable coverage are no longer required to be provided. After December 31, 2014, most health insurance plans will no longer contain preexisting condition exclusions because of the PPACA.[11]

Florida Kidcare Program

The Florida Kidcare Program[12] (Kidcare) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997. The Florida Kidcare program was created to provide a defined set of health benefits to uninsured, low-income children through the establishment of a variety of affordable health benefits coverage options from which families may select coverage and through which families may contribute financially to the health care of their children.[13]

III. Effect of Proposed Changes:

Section 1 amends s. 408.909, F.S., to revise a cross-references to excepted benefits and limited benefits, which are amended in the bill.

Section 2 amends s. 409.817, F.S., relating to Kidcare, to eliminate an exception to the prohibition on preexisting condition exclusions, since PPACA prohibits such exclusions.

Sections 3 and 4 amends ss. 624.123 and 627.402, F.S., to revise cross-references to sections amended by the bill.

Section 5 repeals subsection (3) of s. 627.411, F.S. The bill removes a ground for disapproval of a major medical health insurance policy for failure to meet a 65 percent medical loss ratio and removes the definition of incurred claims. The PPACA requires major medical health insurance to have an 80 percent loss ratio.

Sections 6 and 7 amend ss. 627.6011 and 627.602, F.S. to update cross-references to sections amended by the bill.

Section 8 amends s. 627.642, F.S., to eliminate the requirement that insurers provide an outline of coverage for individual or family accident and health insurance policies. Instead, insurers are required to provide an outline of coverage for a large group policy or policy offering excepted benefits. The PPACA requires a summary of benefits be included in individual and small group major medical policies.

Section 9 amends s. 627.6425, F.S., to remove the guaranteed renewable requirements for individual HMO major medical policies. Currently, s. 627.6425(1), F.S., applies to health insurance coverage as defined in s. 627.6561(5)(a)2., F.S., which includes HMO contracts. Additionally, the only guaranteed renewable statute in the HMO chapter is s. 641.31074, F.S.,

[11] 45 C.F.R. 148.124.
[12] See http://floridakidcare.org/#eligible (last visited Jan. 23, 2016).
[13] Section 409.812, F.S.

but it only applies to group health insurance. The bill deletes the reference to s. 627.6561(5)(a)2., F.S., and refers to s. 624.603, F.S., which includes the definition of health insurance.

Section 10 amends s. 627.6487, F.S., to update cross-references to sections amended by the bill.

Section 11 repeals s. 627.64871, F.S., which relates to creditable coverage and the issuance of certifications of coverage by insurers, since PPACA prohibits preexisting condition exclusions and such certificates are no longer needed.

Section 12 amends s. 627.6512, F.S., relating to the exemption of certain policies from regulations imposed on health insurance policies, to update cross-references to sections amended by the bill.

Section 13 amends s. 627.6513, F.S., to delineate excepted benefits and provide that excepted benefits do not apply to group policies.

Sections 14 and 21 repeal ss. 627.6561 and 641.31071, F.S., relating to preexisting conditions and creditable coverage.

Section 15 amends s. 627.6562, F.S., relating to dependent coverage, to provide a definition of creditable coverage, which delineates what type of coverage qualifies as "creditable coverage" and what coverage does not qualify as creditable. These provisions are currently delineated in s. 627.6561, F.S., which is being repealed by the bill.

Section 16 amends s. 727.65626, F.S., to update a cross-reference to sections amended by the bill.

Section 17 amends s. 627.6699, F.S., to revise a cross-reference to excepted benefits, which is amended by the bill. The section also provide a definition of "late enrollee," as provided in s. 627.6561(1)(b), F.S. The section eliminates provisions relating to preexisting condition exclusions.

Sections 18 and 19 amend ss. 627.6741 and 641.185, F.S., respectively, to update cross-references to sections amended by the bill and to eliminate a provision relating to preexisting conditions.

Section 20 amends s. 641.31, F.S. to delete a provision that exempts individual or large group HMO contracts from any law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments. Federal law establishes deductibles and annual and lifetime limits and provides that copayments are not allowed for certain essential health benefits.

Sections 22 amends s. 641.3111, F.S., to delete the provision that, except as otherwise provided, an HMO subscriber is not entitled to an extension of benefits if the HMO terminates coverage based upon:

- Fraud or intentional misrepresentation in applying for benefits;
- Disenrollment for cause; or

- The subscriber has left the HMO's geographic area with the intent to relocate or establish a new residence outside the organization's geographic area.

Section 23 amends s. 641.312, F.S., to update a cross-reference to a section amended by the bill.

Section 24 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 5 of the bill deletes s. 627.411(3)(a)-(b), F.S. According to the OIR, only paragraph (3)(a) needs to be deleted. The elimination of paragraph (3)(b) removes the definition of incurred claims, which is needed by OIR to review a company's request for rating action (increase or decrease), and therefore paragraph (3)(b) needs to be retained.[14]

VII. Related Issues:

The effective date of CS/SB 1170 is July 1, 2016. According to the Office of Insurance Regulation, implementing the bill in the middle of a plan year may create policyholder confusion

[14] Office of Insurance Regulation, 2016 Agency Legislative Bill Analysis, Jan. 13, 2016. (on file with Banking and Insurance Committee).

and market disruption. Making these provisions effective at the beginning of the calendar year could avoid these negative outcomes.[15]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.909, 409.817, 624.123, 627.402, 627.411, 627.6011, 627.602, 627.642, 627.6425, 627.6487, 627.6512, 627.6513, 627.6562, 627.65626, 627.6699, 627.6741, 641.185, 641.31, 641.3111, and 641.312.

This bill repeals the following sections of the Florida Statutes: 627.64871, 627.6561, and 641.31071.

IX. Additional Information:

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

CS by Banking and Insurance on January 26, 2016:
The CS reinstates provisions relating to HMO conversions and provides technical and conforming changes.

B. Amendments:

None.

[15] *Id*.

By the Committee on Banking and Insurance; and Senator Detert

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A bill to be entitled

An act relating to health plan regulatory administration; amending s. 408.909, F.S.; redefining the term "health care coverage" or "health flex plan coverage"; amending s. 409.817, F.S.; deleting a provision authorizing group insurance plans to impose a certain preexisting condition exclusion; amending s. 624.123, F.S.; conforming a cross-reference; amending s. 627.402, F.S.; redefining the term "nongrandfathered health plan"; amending s. 627.411, F.S.; deleting a provision relating to a minimum loss ratio standard for specified health insurance coverage; deleting provisions specifying certain incurred claims; amending s. 627.6011, F.S., conforming a cross-reference; amending s. 627.602, F.S.; conforming a cross-reference; amending s. 627.642, F.S.; revising the policies to which certain outline of coverage requirements apply; amending s. 627.6425, F.S.; redefining the term "individual health insurance"; revising applicability; amending s. 627.6487, F.S.; redefining terms; repealing s. 627.64871, F.S., relating to certification of coverage; amending s. 627.6512, F.S.; revising a provision specifying that certain sections of the Florida Insurance Code do not apply to a group health insurance policy as that policy relates to specified benefits, under certain circumstances; amending s. 627.6513, F.S.; excluding applicability as to certain types of benefits or coverages; repealing s. 627.6561, F.S., relating to preexisting conditions; amending s. 627.6562, F.S.; redefining the term "creditable coverage"; providing exceptions and applicability;

597-02615-16 20161170c1

amending s. 627.65626, F.S.; conforming a cross-reference; amending s. 627.6699, F.S.; redefining terms; deleting a provision that requires a certain health benefit plan to comply with specified preexisting condition provisions; conforming provisions to changes made by the act; amending s. 627.6741, F.S.; conforming cross-references; conforming a provision to changes made by the act; amending s. 641.185, F.S.; revising certain standards to remove requirements for a health maintenance organization to provide specified coverage for preexisting conditions; conforming provisions to changes made by the act; amending s. 641.31, F.S.; deleting a provision specifying that a law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments may not apply to a certain health maintenance organization contract; conforming a cross-reference; repealing s. 641.31071, F.S., relating to preexisting conditions; amending s. 641.3111, F.S.; deleting a provision specifying that a subscriber is not entitled to an extension of benefits under certain circumstances after termination of a group health maintenance contract; amending s. 641.312, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section

408.909, Florida Statutes, is amended to read:

408.909 Health flex plans.—

(2) DEFINITIONS.—As used in this section, the term:

(d) "Health care coverage" or "health flex plan coverage" means health care services that are covered as benefits under an approved health flex plan or that are otherwise provided, either directly or through arrangements with other persons, via a health flex plan on a prepaid per capita basis or on a prepaid aggregate fixed-sum basis. The terms may also include one or more of the excepted benefits under s. 627.6513(1)-(13) ~~s. 627.6561(5)(b), the benefits under s. 627.6561(5)(c), if offered separately, or the benefits under s. 627.6561(5)(d), if offered as independent, noncoordinated benefits~~.

Section 2. Section 409.817, Florida Statutes, is amended to read:

409.817 Approval of health benefits coverage; financial assistance.—In order for health insurance coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.821, the health benefits coverage must:

(1) Be certified by the Office of Insurance Regulation of the Financial Services Commission under s. 409.818 as meeting, exceeding, or being actuarially equivalent to the benchmark benefit plan;

(2) Be guarantee issued;

(3) Be community rated;

(4) Not impose any preexisting condition exclusion for covered benefits; ~~however, group health insurance plans may permit the imposition of a preexisting condition exclusion, but only insofar as it is permitted under s. 627.6561;~~

(5) Comply with the applicable limitations on premiums and cost sharing in s. 409.816;

(6) Comply with the quality assurance and access standards developed under s. 409.820; and

(7) Establish periodic open enrollment periods, which may not occur more frequently than quarterly.

Section 3. Paragraph (b) of subsection (1) of section 624.123, Florida Statutes, is amended to read:

624.123 Certain international health insurance policies; exemption from code.—

(1) International health insurance policies and applications may be solicited and sold in this state at any international airport to a resident of a foreign country. Such international health insurance policies shall be solicited and sold only by a licensed health insurance agent and underwritten only by an admitted insurer. For purposes of this subsection:

(b) "International health insurance policy" means health insurance, as provided ~~defined~~ in s. 627.6562(3)(a)2. ~~s. 627.6561(5)(a)2.~~, which is offered to an individual, covering only a resident of a foreign country on an annual basis.

Section 4. Subsection (2) of section 627.402, Florida Statutes, is amended to read:

627.402 Definitions.—As used in this part, the term:

(2) "Nongrandfathered health plan" is a health insurance policy or health maintenance organization contract that is not a grandfathered health plan and does not provide the benefits or coverages specified under s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(e)~~.

Section 5. Subsection (3) of section 627.411, Florida

Statutes, is amended to read:

627.411 Grounds for disapproval.—

~~(3)(a) For health insurance coverage as described in s. 627.6561(5)(a)2., the minimum loss ratio standard of incurred claims to earned premium for the form shall be 65 percent.~~

~~(b) Incurred claims are claims occurring within a fixed period, whether or not paid during the same period, under the terms of the policy period.~~

~~1. Claims include scheduled benefit payments or services provided by a provider or through a provider network for dental, vision, disability, and similar health benefits.~~

~~2. Claims do not include state assessments, taxes, company expenses, or any expense incurred by the company for the cost of adjusting and settling a claim, including the review, qualification, oversight, management, or monitoring of a claim or incentives or compensation to providers for other than the provisions of health care services.~~

~~3. A company may at its discretion include costs that are demonstrated to reduce claims, such as fraud intervention programs or case management costs, which are identified in each filing, are demonstrated to reduce claims costs, and do not result in increasing the experience period loss ratio by more than 5 percent.~~

~~4. For scheduled claim payments, such as disability income or long-term care, the incurred claims shall be the present value of the benefit payments discounted for continuance and interest.~~

Section 6. Section 627.6011, Florida Statutes, is amended to read:

627.6011 Mandated coverages.—Mandatory health benefits regulated under this chapter are not intended to apply to the types of health benefit plans listed in s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(c)~~, issued in any market, unless specifically designated otherwise. For purposes of this section, the term "mandatory health benefits" means those benefits set forth in ss. 627.6401-627.64193, and any other mandatory treatment or health coverages or benefits enacted on or after July 1, 2012.

Section 7. Paragraph (h) of subsection (1) of section 627.602, Florida Statutes, is amended to read:

627.602 Scope, format of policy.—

(1) Each health insurance policy delivered or issued for delivery to any person in this state must comply with all applicable provisions of this code and all of the following requirements:

(h) Section 641.312 and the provisions of the Employee Retirement Income Security Act of 1974, as implemented by 29 C.F.R. s. 2560.503-1, relating to internal grievances. This paragraph does not apply to a health insurance policy that is subject to the Subscriber Assistance Program under s. 408.7056 or to the types of benefits or coverages provided under s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(c)~~ issued in any market.

Section 8. Subsection (1) of section 627.642, Florida Statutes, is amended to read:

627.642 Outline of coverage.—

(1) A policy offering benefits defined in s. 627.6513(1)-(14) or a large group ~~no individual or family accident and health insurance~~ policy may not ~~shall~~ be delivered, or issued for delivery, in this state unless:

(a) It is accompanied by an appropriate outline of coverage; or

(b) An appropriate outline of coverage is completed and delivered to the applicant at the time application is made, and an acknowledgment of receipt or certificate of delivery of such outline is provided to the insurer with the application.

In the case of a direct response, such as a written application to the insurance company from an applicant, the outline of coverage shall accompany the policy when issued.

Section 9. Subsections (1), (6), and (7) of section 627.6425, Florida Statutes, are amended, to read:

627.6425 Renewability of individual coverage.—

(1) Except as otherwise provided in this section, an insurer that provides individual health insurance coverage to an individual shall renew or continue in force such coverage at the option of the individual. For the purpose of this section, the term "individual health insurance" means health insurance coverage, as described in s. 624.603 ~~s. 627.6561(5)(a)2.~~, offered to an individual in this state, including certificates of coverage offered to individuals in this state as part of a group policy issued to an association outside this state, but the term does not include short-term limited duration insurance or excepted benefits specified in s. 627.6513(1)-(14) ~~subsection (6) or subsection (7)~~.

~~(6) The requirements of this section do not apply to any health insurance coverage in relation to its provision of excepted benefits described in s. 627.6561(5)(b).~~

~~(7) The requirements of this section do not apply to any~~

~~health insurance coverage in relation to its provision of excepted benefits described in s. 627.6561(5)(c), (d), or (e), if the benefits are provided under a separate policy, certificate, or contract of insurance.~~

Section 10. Paragraph (b) of subsection (2) and subsection (3) of section 627.6487, Florida Statutes, are amended to read:

627.6487 Guaranteed availability of individual health insurance coverage to eligible individuals.—

(2) For the purposes of this section:

(b) "Individual health insurance" means health insurance, as defined in s. 624.603 ~~s. 627.6561(5)(a)2.~~, which is offered to an individual, including certificates of coverage offered to individuals in this state as part of a group policy issued to an association outside this state, but the term does not include short-term limited duration insurance or excepted benefits specified in s. 627.6513(1)-(14) ~~s. 627.6561(5)(b) or, if the benefits are provided under a separate policy, certificate, or contract, the term does not include excepted benefits specified in s. 627.6561(5)(c), (d), or (e)~~.

(3) For the purposes of this section, the term "eligible individual" means an individual:

(a)1. For whom, as of the date on which the individual seeks coverage under this section, the aggregate of the periods of creditable coverage, as defined in s. 627.6562(3) ~~s. 627.6561(5) and (6)~~, is 18 or more months; and

2.a. Whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan, or health insurance coverage offered in connection with any such plan; or

b. Whose most recent prior creditable coverage was under an individual plan issued in this state by a health insurer or health maintenance organization, which coverage is terminated due to the insurer or health maintenance organization becoming insolvent or discontinuing the offering of all individual coverage in the State of Florida, or due to the insured no longer living in the service area in the State of Florida of the insurer or health maintenance organization that provides coverage through a network plan in the State of Florida;

(b) Who is not eligible for coverage under:

1. A group health plan, as defined in s. 2791 of the Public Health Service Act;

2. A conversion policy or contract issued by an authorized insurer or health maintenance organization under s. 627.6675 or s. 641.3921, respectively, offered to an individual who is no longer eligible for coverage under either an insured or self-insured employer plan;

3. Part A or part B of Title XVIII of the Social Security Act; or

4. A state plan under Title XIX of such act, or any successor program, and does not have other health insurance coverage;

(c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) was not terminated based on a factor described in s. 627.6571(2)(a) or (b), relating to nonpayment of premiums or fraud, unless such nonpayment of premiums or fraud was due to acts of an employer or person other than the individual;

(d) Who, having been offered the option of continuation

coverage under a COBRA continuation provision or under s. 627.6692, elected such coverage; and

(e) Who, if the individual elected such continuation provision, has exhausted such continuation coverage under such provision or program.

Section 11. Section 627.64871, Florida Statutes, is repealed.

Section 12. Section 627.6512, Florida Statutes, is amended to read:

627.6512 Exemption of certain group health insurance policies.—Sections ~~627.6561,~~ 627.65615, 627.65625, and 627.6571 do not apply to~~:~~

~~(1)~~ any group insurance policy in relation to its provision of ~~excepted~~ benefits described in s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)~~.

~~(2) Any group health insurance policy in relation to its provision of excepted benefits described in s. 627.6561(5)(c), if the benefits:~~

~~(a) Are provided under a separate policy, certificate, or contract of insurance; or~~

~~(b) Are otherwise not an integral part of the policy.~~

~~(3) Any group health insurance policy in relation to its provision of excepted benefits described in s. 627.6561(5)(d), if all of the following conditions are met:~~

~~(a) The benefits are provided under a separate policy, certificate, or contract of insurance;~~

~~(b) There is no coordination between the provision of such benefits and any exclusion of benefits under any group policy maintained by the same policyholder; and~~

~~(c) Such benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health policy maintained by the same policyholder.~~

~~(4) Any group health policy in relation to its provision of excepted benefits described in s. 627.6561(5)(c), if the benefits are provided under a separate policy, certificate, or contract of insurance.~~

Section 13. Section 627.6513, Florida Statutes, is amended to read:

627.6513 Scope.—Section 641.312 and the provisions of the Employee Retirement Income Security Act of 1974, as implemented by 29 C.F.R. s. 2560.503-1, relating to internal grievances, apply to all group health insurance policies issued under this part. This section does not apply to a group health insurance policy that is subject to the Subscriber Assistance Program in s. 408.7056 or to: ~~the types of benefits or coverages provided under s. 627.6561(5)(b)-(c) issued in any market.~~

(1) Coverage only for accident insurance or disability income insurance, or any combination thereof.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical payment insurance.

(6) Credit-only insurance.

(7) Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.

(8) Other similar insurance coverage, specified in rules

adopted by the commission, under which benefits for medical care are secondary or incidental to other insurance benefits. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(9) Limited scope dental or vision benefits, if offered separately.

(10) Benefits for long-term care, nursing home care, home health care, or community-based care, or any combination thereof, if offered separately.

(11) Other similar limited benefits, if offered separately, as specified in rules adopted by the commission.

(12) Coverage only for a specified disease or illness, if offered as independent, noncoordinated benefits.

(13) Hospital indemnity or other fixed indemnity insurance, if offered as independent, noncoordinated benefits.

(14) Benefits provided through a Medicare supplemental health insurance policy, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, and similar supplemental coverage provided to coverage under a group health plan, which are offered as a separate insurance policy and as independent, noncoordinated benefits.

Section 14. Section 627.6561, Florida Statutes, is repealed.

Section 15. Subsection (3) of section 627.6562, Florida Statutes, is amended to read:

627.6562 Dependent coverage.—

(3) If, pursuant to subsection (2), a child is provided

coverage under the parent's policy after the end of the calendar year in which the child reaches age 25 and coverage for the child is subsequently terminated, the child is not eligible to be covered under the parent's policy unless the child was continuously covered by other creditable coverage without a gap in coverage of more than 63 days.

(a) For the purposes of this subsection, the term "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following: ~~has the same meaning as provided in s. 627.6561(5).~~

1. A group health plan, as defined in s. 2791 of the Public Health Service Act.

2. Health insurance coverage consisting of medical care provided directly through insurance or reimbursement or otherwise, and including terms and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.

3. Part A or part B of Title XVIII of the Social Security Act.

4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under s. 1928.

5. 10 U.S.C. chapter 55.

6. A medical care program of the Indian Health Service or of a tribal organization.

7. The Florida Comprehensive Health Association or another state health benefit risk pool.

8. A health plan offered under 5 U.S.C. chapter 89.

9. A public health plan as defined by rules adopted by the commission. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

10. A health benefit plan under s. 5(e) of the Peace Corps Act, 22 U.S.C. s. 2504(e).

(b) Creditable coverage does not include coverage that consists of one or more, or any combination thereof, of the following excepted benefits:

1. Coverage only for accident insurance or disability income insurance, or any combination thereof.

2. Coverage issued as a supplement to liability insurance.

3. Liability insurance, including general liability insurance and automobile liability insurance.

4. Workers' compensation or similar insurance.

5. Automobile medical payment insurance.

6. Credit-only insurance.

7. Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.

8. Other similar insurance coverage specified in rules adopted by the commission under which benefits for medical care are secondary or incidental to other insurance benefits. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(c) The following benefits are not subject to the creditable coverage requirements, if offered separately:

1. Limited scope dental or vision benefits.

2. Benefits for long-term care, nursing home care, home

health care, or community-based care, or any combination thereof.

3. Other similar, limited benefits specified in rules adopted by the commission.

(d) The following benefits are not subject to creditable coverage requirements if offered as independent, noncoordinated benefits:

1. Coverage only for a specified disease or illness.

2. Hospital indemnity or other fixed indemnity insurance.

(e) Benefits provided through a Medicare supplemental health insurance policy, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, and similar supplemental coverage provided to coverage under a group health plan are not considered creditable coverage if offered as a separate insurance policy.

Section 16. Subsection (1) of section 627.65626, Florida Statutes, is amended to read:

627.65626 Insurance rebates for healthy lifestyles.—

(1) Any rate, rating schedule, or rating manual for a health insurance policy that provides creditable coverage as defined in s. 627.6562(3) ~~s. 627.6561(5)~~ filed with the office shall provide for an appropriate rebate of premiums paid in the last policy year, contract year, or calendar year when the majority of members of a health plan have enrolled and maintained participation in any health wellness, maintenance, or improvement program offered by the group policyholder and health plan. The rebate may be based upon premiums paid in the last calendar year or policy year. The group must provide evidence of

demonstrative maintenance or improvement of the enrollees' health status as determined by assessments of agreed-upon health status indicators between the policyholder and the health insurer, including, but not limited to, reduction in weight, body mass index, and smoking cessation. The group or health insurer may contract with a third-party administrator to assemble and report the health status required in this subsection between the policyholder and the health insurer. Any rebate provided by the health insurer is presumed to be appropriate unless credible data demonstrates otherwise, or unless the rebate program requires the insured to incur costs to qualify for the rebate which equal or exceed the value of the rebate, but the rebate may not exceed 10 percent of paid premiums.

Section 17. Paragraphs (e), (l), and (n) of subsection (3), paragraphs (c) and (d) of subsection (5), and paragraph (b) of subsection (6) of section 627.6699, Florida Statutes, are amended to read:

627.6699 Employee Health Care Access Act.—

(3) DEFINITIONS.—As used in this section, the term:

(e) "Creditable coverage" has the same meaning ascribed in s. 627.6562(3) ~~s. 627.6561~~.

(l) "Late enrollee" means an eligible employee or dependent who, with respect to coverage under a group health policy, is a participant or beneficiary who enrolls under the policy other than during:

1. The first period in which the individual is eligible to enroll under the policy.

2. A special enrollment period, as provided under s.

627.65615 ~~as defined under s. 627.6561(1)(b)~~.

(n) "Modified community rating" means a method used to develop carrier premiums which spreads financial risk across a large population; allows the use of separate rating factors for age, gender, family composition, tobacco usage, and geographic area as determined under paragraph (5)(e) ~~(5)(f)~~; and allows adjustments for~~:~~ claims experience, health status, or duration of coverage as permitted under subparagraph (6)(b)5.; and administrative and acquisition expenses as permitted under subparagraph (6)(b)5.

(5) AVAILABILITY OF COVERAGE.—

~~(c) Except as provided in paragraph (d), a health benefit plan covering small employers must comply with preexisting condition provisions specified in s. 627.6561 or, for health maintenance contracts, in s. 641.31071.~~

(c)~~(d)~~ A health benefit plan covering small employers, issued or renewed on or after January 1, 1994, must comply with the following conditions:

1. All health benefit plans must be offered and issued on a guaranteed-issue basis. Additional or increased benefits may only be offered by riders.

~~2. Paragraph (c) applies to health benefit plans issued to a small employer who has two or more eligible employees and to health benefit plans that are issued to a small employer who has fewer than two eligible employees and that cover an employee who has had creditable coverage continually to a date not more than 63 days before the effective date of the new coverage.~~

2.~~3.~~ For health benefit plans that are issued to a small employer who has fewer than two employees and that cover an

employee who has not been continually covered by creditable coverage within 63 days before the effective date of the new coverage, preexisting condition provisions must not exclude coverage for a period beyond 24 months following the employee's effective date of coverage and may relate only to:

a. Conditions that, during the 24-month period immediately preceding the effective date of coverage, had manifested themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received; or

b. A pregnancy existing on the effective date of coverage.

(6) RESTRICTIONS RELATING TO PREMIUM RATES.—

(b) For all small employer health benefit plans that are subject to this section and issued by small employer carriers on or after January 1, 1994, premium rates for health benefit plans are subject to the following:

1. Small employer carriers must use a modified community rating methodology in which the premium for each small employer is determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area as determined under paragraph (5)(e) ~~(5)(f)~~ and in which the premium may be adjusted as permitted by this paragraph. A small employer carrier is not required to use gender as a rating factor for a nongrandfathered health plan.

2. Rating factors related to age, gender, family composition, tobacco use, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to office review and

approval.

3. Small employer carriers may not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changes or benefits are changed. However, a small employer carrier may modify the rate one time within the 12 months after the initial issue date for a small employer who enrolls under a previously issued group policy that has a common anniversary date for all employers covered under the policy if:

a. The carrier discloses to the employer in a clear and conspicuous manner the date of the first renewal and the fact that the premium may increase on or after that date.

b. The insurer demonstrates to the office that efficiencies in administration are achieved and reflected in the rates charged to small employers covered under the policy.

4. A carrier may issue a group health insurance policy to a small employer health alliance or other group association with rates that reflect a premium credit for expense savings attributable to administrative activities being performed by the alliance or group association if such expense savings are specifically documented in the insurer's rate filing and are approved by the office. Any such credit may not be based on different morbidity assumptions or on any other factor related to the health status or claims experience of any person covered under the policy. This subparagraph does not exempt an alliance or group association from licensure for activities that require licensure under the insurance code. A carrier issuing a group health insurance policy to a small employer health alliance or other group association shall allow any properly licensed and

appointed agent of that carrier to market and sell the small employer health alliance or other group association policy. Such agent shall be paid the usual and customary commission paid to any agent selling the policy.

5. Any adjustments in rates for claims experience, health status, or duration of coverage may not be charged to individual employees or dependents. For a small employer's policy, such adjustments may not result in a rate for the small employer which deviates more than 15 percent from the carrier's approved rate. Any such adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer. A small employer carrier may make an adjustment to a small employer's renewal premium, up to 10 percent annually, due to the claims experience, health status, or duration of coverage of the employees or dependents of the small employer. If the aggregate resulting from the application of such adjustment exceeds the premium that would have been charged by application of the approved modified community rate by 4 percent for the current policy term, the carrier shall limit the application of such adjustments only to minus adjustments. For any subsequent policy term, if the total aggregate adjusted premium actually charged does not exceed the premium that would have been charged by application of the approved modified community rate by 4 percent, the carrier may apply both plus and minus adjustments. A small employer carrier may provide a credit to a small employer's premium based on administrative and acquisition expense differences resulting from the size of the group. Group size administrative and acquisition expense factors may be developed by each carrier to reflect the carrier's experience

and are subject to office review and approval.

6. A small employer carrier rating methodology may include separate rating categories for one dependent child, for two dependent children, and for three or more dependent children for family coverage of employees having a spouse and dependent children or employees having dependent children only. A small employer carrier may have fewer, but not greater, numbers of categories for dependent children than those specified in this subparagraph.

7. Small employer carriers may not use a composite rating methodology to rate a small employer with fewer than 10 employees. For the purposes of this subparagraph, the term "composite rating methodology" means a rating methodology that averages the impact of the rating factors for age and gender in the premiums charged to all of the employees of a small employer.

8. A carrier may separate the experience of small employer groups with fewer than 2 eligible employees from the experience of small employer groups with 2-50 eligible employees for purposes of determining an alternative modified community rating.

a. If a carrier separates the experience of small employer groups, the rate to be charged to small employer groups of fewer than 2 eligible employees may not exceed 150 percent of the rate determined for small employer groups of 2-50 eligible employees. However, the carrier may charge excess losses of the experience pool consisting of small employer groups with less than 2 eligible employees to the experience pool consisting of small employer groups with 2-50 eligible employees so that all losses

are allocated and the 150-percent rate limit on the experience pool consisting of small employer groups with less than 2 eligible employees is maintained.

b. Notwithstanding s. 627.411(1), the rate to be charged to a small employer group of fewer than 2 eligible employees, insured as of July 1, 2002, may be up to 125 percent of the rate determined for small employer groups of 2-50 eligible employees for the first annual renewal and 150 percent for subsequent annual renewals.

9. A carrier shall separate the experience of grandfathered health plans from nongrandfathered health plans for determining rates.

Section 18. Subsection (1) and paragraph (c) of subsection (2) of section 627.6741, Florida Statutes, are amended to read:

627.6741 Issuance, cancellation, nonrenewal, and replacement.—

(1)(a) An insurer issuing Medicare supplement policies in this state shall offer the opportunity of enrolling in a Medicare supplement policy, without conditioning the issuance or effectiveness of the policy on, and without discriminating in the price of the policy based on, the medical or health status or receipt of health care by the individual:

1. To any individual who is 65 years of age or older, or under 65 years of age and eligible for Medicare by reason of disability or end-stage renal disease, and who resides in this state, upon the request of the individual during the 6-month period beginning with the first month in which the individual has attained 65 years of age and is enrolled in Medicare Part B, or is eligible for Medicare by reason of a disability or end-

stage renal disease, and is enrolled in Medicare Part B; or

2. To any individual who is 65 years of age or older, or under 65 years of age and eligible for Medicare by reason of a disability or end-stage renal disease, who is enrolled in Medicare Part B, and who resides in this state, upon the request of the individual during the 2-month period following termination of coverage under a group health insurance policy.

(b) The 6-month period to enroll in a Medicare supplement policy for an individual who is under 65 years of age and is eligible for Medicare by reason of disability or end-stage renal disease and otherwise eligible under subparagraph (a)1. or subparagraph (a)2. and first enrolled in Medicare Part B before October 1, 2009, begins on October 1, 2009.

(c) A company that has offered Medicare supplement policies to individuals under 65 years of age who are eligible for Medicare by reason of disability or end-stage renal disease before October 1, 2009, may, for one time only, effect a rate schedule change that redefines the age bands of the premium classes without activating the period of discontinuance required by s. 627.410(6)(e)2.

(d) As a part of an insurer's rate filings, before and including the insurer's first rate filing for a block of policy forms in 2015, notwithstanding the provisions of s. 627.410(6)(e)3., an insurer shall consider the experience of the policies or certificates for the premium classes including individuals under 65 years of age and eligible for Medicare by reason of disability or end-stage renal disease separately from the balance of the block so as not to affect the other premium classes. For filings in such time period only, credibility of

that experience shall be as follows: if a block of policy forms has 1,250 or more policies or certificates in force in the age band including ages under 65 years of age, full or 100-percent credibility shall be given to the experience; and if fewer than 250 policies or certificates are in force, no or zero-percent credibility shall be given. Linear interpolation shall be used for in-force amounts between the low and high values. Florida-only experience shall be used if it is 100-percent credible. If Florida-only experience is not 100-percent credible, a combination of Florida-only and nationwide experience shall be used. If Florida-only experience is zero-percent credible, nationwide experience shall be used. The insurer may file its initial rates and any rate adjustment based upon the experience of these policies or certificates or based upon expected claim experience using experience data of the same company, other companies in the same or other states, or using data publicly available from the Centers for Medicaid and Medicare Services if the insurer's combined Florida and nationwide experience is not 100-percent credible, separate from the balance of all other Medicare supplement policies.

A Medicare supplement policy issued to an individual under subparagraph (a)1. or subparagraph (a)2. may not exclude benefits based on a preexisting condition if the individual has a continuous period of creditable coverage, as defined in s. 627.6562(3) ~~s. 627.6561(5)~~, of at least 6 months as of the date of application for coverage.

(2) For both individual and group Medicare supplement policies:

(c) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate or creditable coverage as defined in s. 627.6562(3) ~~s. 627.6561(5)~~, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy~~, subject to the requirements of s. 627.6561(6)-(11)~~.

Section 19. Paragraphs (f) and (h) of subsection (1) of section 641.185, Florida Statutes, are amended to read:

641.185 Health maintenance organization subscriber protections.—

(1) With respect to the provisions of this part and part III, the principles expressed in the following statements shall serve as standards to be followed by the commission, the office, the department, and the Agency for Health Care Administration in exercising their powers and duties, in exercising administrative discretion, in administrative interpretations of the law, in enforcing its provisions, and in adopting rules:

(f) A health maintenance organization subscriber should receive the flexibility to transfer to another Florida health maintenance organization, regardless of health status, pursuant to ss. 641.228, 641.3104, ~~641.3107,~~ 641.3111, 641.3921, and 641.3922.

(h) A health maintenance organization that issues a group health contract must~~: provide coverage for preexisting conditions pursuant to s. 641.31071;~~ guarantee renewability of coverage pursuant to s. 641.31074~~,~~ ~~;~~ provide notice of

cancellation pursuant to s. 641.3108~~,~~ ~~;~~ provide extension of benefits pursuant to s. 641.3111~~,~~ ~~;~~ provide for conversion on termination of eligibility pursuant to s. 641.3921~~,~~ ~~;~~ and provide for conversion contracts and conditions pursuant to s. 641.3922.

Section 20. Subsection (2) and paragraph (a) of subsection (40) of section 641.31, Florida Statutes, are amended to read:

641.31 Health maintenance contracts.—

(2) The rates charged by any health maintenance organization to its subscribers shall not be excessive, inadequate, or unfairly discriminatory or follow a rating methodology that is inconsistent, indeterminate, or ambiguous or encourages misrepresentation or misunderstanding. ~~A law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments shall not apply to any health maintenance organization contract that provides coverage as described in s. 641.31071(5)(a)2., offered or delivered to an individual or a group of 51 or more persons.~~ The commission, in accordance with generally accepted actuarial practice as applied to health maintenance organizations, may define by rule what constitutes excessive, inadequate, or unfairly discriminatory rates and may require whatever information it deems necessary to determine that a rate or proposed rate meets the requirements of this subsection.

(40)(a) Any group rate, rating schedule, or rating manual for a health maintenance organization policy, which provides creditable coverage as defined in s. 627.6562(3) ~~s. 627.6561(5)~~, filed with the office shall provide for an appropriate rebate of premiums paid in the last policy year, contract year, or calendar year when the majority of members of a health plan are

enrolled in and have maintained participation in any health wellness, maintenance, or improvement program offered by the group contract holder. The group must provide evidence of demonstrative maintenance or improvement of his or her health status as determined by assessments of agreed-upon health status indicators between the group and the health insurer, including, but not limited to, reduction in weight, body mass index, and smoking cessation. Any rebate provided by the health maintenance organization is presumed to be appropriate unless credible data demonstrates otherwise, or unless the rebate program requires the insured to incur costs to qualify for the rebate which equals or exceeds the value of the rebate but the rebate may not exceed 10 percent of paid premiums.

Section 21. Section 641.31071, Florida Statutes, is repealed.

Section 22. Subsection (4) of section 641.3111, Florida Statutes, is amended to read:

641.3111 Extension of benefits.—

~~(4) Except as provided in subsection (1), no subscriber is entitled to an extension of benefits if the termination of the contract by the health maintenance organization is based upon any event referred to in s. 641.3922(7)(a), (b), or (c).~~

Section 23. Section 641.312, Florida Statutes, is amended to read:

641.312 Scope.—The Office of Insurance Regulation may adopt rules to administer the provisions of the National Association of Insurance Commissioners' Uniform Health Carrier External Review Model Act, issued by the National Association of Insurance Commissioners and dated April 2010. This section does

not apply to a health maintenance contract that is subject to the Subscriber Assistance Program under s. 408.7056 or to the types of benefits or coverages provided under s. 627.6513(1)-(14) ~~s. 627.6561(5)(b)-(c)~~ issued in any market.

Section 24. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1196
INTRODUCER:	Education Pre-K - 12 Committee and Senators Bean and Hutson
SUBJECT:	Emergency Allergy Treatment in Schools
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1196 modifies the definition of an authorized entity for the purposes of emergency allergy treatment and authorizes public and private schools to enter into agreements with wholesale distributors or manufacturers to obtain epinephrine auto-injectors. Specifically, the bill:

- Expands the definition of an authorized entity to include private schools and their employees, agents, and the physician who provides the standing protocol for school epinephrine auto-injectors; changes the purposes for which public and private schools and their employees, agents, and physician are considered an authorized entity; and extends immunity from liability to such schools and their employees, agents, and physician.
- Clarifies that public and private schools may obtain a supply of epinephrine auto-injectors from a wholesale distributor or enter into an arrangement with a wholesale distributor or manufacturer for the epinephrine auto-injectors.

The bill has no fiscal impact.

The bill takes effect July 1, 2016.

II. Present Situation:

The law provides for parents of students to receive accurate and timely information regarding their child's academic progress and be informed about ways to help their child succeed in

school.[1] Students and parents are afforded numerous rights including, but not limited to, epinephrine[2] use and supply.[3] Additionally, through the "Emergency Allergy Treatment Act," certain authorized entities[4] may also obtain and administer epinephrine auto-injectors.[5]

Epinephrine Use

A student who has experienced or is at risk for life-threatening allergic reactions is authorized to carry an epinephrine auto-injector and self-administer epinephrine by auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities, if the school secures authorization from the student's parent and physician.[6]

Epinephrine Supply

Public and Private Schools

Public and private schools may purchase from a wholesale distributor[7] and maintain in a locked, secure location on its premises a supply of epinephrine auto-injectors for use if a student experiences an anaphylactic reaction.[8] The participating school district or private school, as applicable, must adopt a protocol developed by a licensed physician for a trained school personnel to administer an epinephrine auto-injection.[9] The supply of epinephrine auto-injectors may be provided to and used by a student, who is authorized to self-administer epinephrine by auto-injector, or by trained school personnel.[10]

Other Authorized Entities

The law specifies that an authorized entity that acquires a stock supply of epinephrine auto-injectors, in accordance with the law, is authorized to make the auto-injectors available to individuals, other than certified individuals, who may administer the auto-injector to a person

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[1] Section 1002.20, F.S.

[2] "Epinephrine injection is used along with emergency medical treatment to treat very serious allergic reactions caused by insect bites or stings, foods, medications, latex, and other causes." The injection comes as a pre-filled automatic injection device containing a liquid solution to inject under the skin or into the muscle in the outer side of the thigh. It is usually injected as needed at the first sign of a serious allergic reaction. Typically, automatic injection devices contain enough solution for one dose of epinephrine. U.S. Department of Health and Human Services, National Institutes of Health, *Epinephrine Injection*, http://www.nlm.nih.gov/medlineplus/druginfo/meds/a603002.html (last visited Jan. 28, 2016).

[3] Section 1002.20(3), F.S.

[4] An "authorized entity" means an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. A school is considered an authorized entity under the "Emergency Allergy Treatment Act," only for the purposes of conducting educational training programs related to the recognition of allergic symptoms and proper administration of epinephrine auto-injectors. Section 381.88(1)(b) and (5), F.S.

[5] Sections 381.88(2)(b) and 381.885, F.S.

[6] Section 1002.20(3)(i)1., F.S.; *see also* Rule 6A-6.0251, F.A.C.

[7] A "wholesale distributor" means any person engaged in wholesale distribution of prescription drugs in or into this state, including, but not limited to, manufacturers; repackagers; own-label distributors; jobbers; private-label distributors; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; exporters; retail pharmacies; and the agents thereof that conduct wholesale distributions. Section 499.003(54), F.S.

[8] Sections 1002.20(3)(i)2. and 1002.42(17)(a), F.S.

[9] *Id*.

[10] *Id*.

believed in good faith to be experiencing a severe allergic reaction if the epinephrine auto-injectors are stored in a locked, secure container and are made available only upon remote authorization after consulting an authorized health care practitioner, as specified.[11]

Epinephrine Liability

School Districts and Private Schools

The school district or private school, as applicable, and its employees and agents, including the physician who provides the standing protocol for school epinephrine auto-injectors, are not liable for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is having an anaphylactic reaction:[12]

- Unless the trained school personnel's action is willful and wanton;
- Notwithstanding that the parents or guardians of the student to whom the epinephrine is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable; and
- Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced registered nurse practitioner.

Other Individuals

Additionally, the law affords civil liability immunity protections to certain individuals (e.g., authorized health care practitioner, a dispensing health care practitioner or pharmacist and an uncertified person who administers epinephrine auto-injectors in accordance with the law) who possess, administer, or store an epinephrine auto-injector, in accordance with the law.[13]

III. Effect of Proposed Changes:

This bill modifies the definition of authorized entity for the purposes of emergency allergy treatment and authorizes public and private schools to enter into agreements with wholesale distributors or manufacturers[14] to obtain epinephrine auto-injectors at an affordable price.

[11] Section 381.885(4), F.S.
[12] Section 1002.20(3)(i)3, F.S.
[13] Section 381.885(5), F.S.
[14] A "manufacturer" means: (a) a person who prepares, derives, manufactures, or produces a drug, device, or cosmetic; (b) the holder or holders of a New Drug Application (NDA), and Abbreviated New Drug Application (ANDA), Biologics License Application (BLA), or a New Animal Drug Application (NADA), provided such application has become effective or is otherwise approved consistent with s. 499.023; (c) a private label distributor for whom the private label distributor's prescription drugs are originally manufactured and labeled for the distributor and have not been repackaged; (d) a person registered under the federal act as a manufacturer of a prescription drug, who is described in paragraph (a), (b), or (c), who has entered into a written agreement with another prescription drug manufacturer that authorizes either manufacturer to distribute the prescription drug identified in the agreement as the manufacturer of that drug consistent with the federal act and its implementing regulations; (e) a member of an affiliated group that includes, but is not limited to, persons described in paragraph (a), (b), (c), or (d), which member distributes prescription drugs, whether or not obtaining title to the drugs, only for the manufacturer of the drugs who is also a member of the affiliated group as defined in s. 1504 of the Internal Revenue Code of 1986, as amended. The manufacturer must disclose the names of all its affiliated group members to the department; or (f) a person permitted as a third party logistics provider, only while providing warehousing, distribution, or other logistics services on behalf of a person described in paragraph (a), (b), (c), (d), or (e). The term "manufacturer" does not include a

Authorized Entity

The bill expands the definition of authorized entity to include private schools and their employees, agents, and the physician who provides the standing protocol for school epinephrine auto-injectors. Currently, public schools and their employees and agents including the physician, as specified, are considered an authorized entity.[15]

Additionally, the bill changes the purposes for which public and private schools will be considered as authorized entity. Current law specifies that public schools are considered authorized entity only for the purposes of conducting educational training programs which must include recognition of symptoms of allergic reactions and the administration of epinephrine auto-injectors.[16] The bill changes that purpose by authorizing public and private schools to acquire a stock supply of epinephrine auto-injectors in accordance with the law and make the auto-injectors available to individuals, other than certified individuals, who may administer the auto-injectors to a person believed in good faith to be experiencing a severe allergic reaction, as specified.[17] The bill also expands immunity from liability to the public and private schools and their employees, agents, and physician, as specified.

Epinephrine Supply

The bill authorizes additional ways to obtain epinephrine auto-injectors by permitting schools to enter into arrangements with wholesale distributors or manufacturers. Current law already authorizes public and private schools to purchase a supply of epinephrine auto-injectors from wholesale distributors.

The bill clarifies that public and private schools may obtain a supply of epinephrine auto-injectors from a wholesale distributor or enter into an arrangement with a wholesale distributor or manufacturer for the epinephrine auto-injectors at fair-market, free, or reduced prices for use if a student experiences an anaphylactic reaction. Such arrangements may involve third party entities other than the wholesale distributors and manufacturers. Accordingly, such manufacturers and third party entities, in addition to the wholesale distributors, may be considered agents of school districts and private schools, as applicable, and may be granted immunity from liability for an injury arising from the use of an epinephrine auto-injector.

The bill eliminates the requirement that the supply of epinephrine auto-injectors obtained by public and private schools must be kept locked on the school premises but continues to maintain current law requiring the schools to maintain the epinephrine auto-injectors in a secure location on the school premises.[18]

The bill takes effect July 1, 2016.

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pharmacy that is operating in compliance with pharmacy practice standards as defined in chapter 465 and rules adopted under that chapter. Section 499.003(30), F.S.

[15] Section 1002.20(3)(i), F.S.

[16] Section 381.88(5), F.S.

[17] Section 381.885(4), F.S.

[18] Sections 1002.20(3)(i)2. and 1002.42(17)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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: 381.88, 1002.20, and 1002.42.

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 Education Pre-K - 12 on February 2, 2016:
The committee substitute maintains the substance of the bill with one modification that removes a requirement that epinephrine auto-injectors obtained by public and private schools must be kept locked.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senators Bean and Hutson

581-02937-16 20161196c1

A bill to be entitled

An act relating to emergency allergy treatment in schools; amending s. 381.88, F.S.; revising the term "authorized entity"; amending ss. 1002.20 and 1002.42, F.S.; authorizing a public school and a private school, respectively, to enter into certain arrangements with wholesale distributors or manufacturers for epinephrine auto-injectors; revising the storage requirements for epinephrine auto-injectors; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 381.88, Florida Statutes, is amended to read:

381.88 Emergency allergy treatment.—

(2) As used in this section and s. 381.885, the term:

(b) "Authorized entity" means an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. However, a school as described in s. 1002.20(3)(i) or s. 1002.42(17)(b) is an authorized entity for the purposes of s. 381.885(4) and (5) ~~subsection (5)~~ only.

Section 2. Paragraph (i) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12

students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(i) *Epinephrine use and supply.*—

1. A student who has experienced or is at risk for life-threatening allergic reactions may carry an epinephrine auto-injector and self-administer epinephrine by auto-injector while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities if the school has been provided with parental and physician authorization. The State Board of Education, in cooperation with the Department of Health, shall adopt rules for such use of epinephrine auto-injectors that shall include provisions to protect the safety of all students from the misuse or abuse of auto-injectors. A school district, county health department, public-private partner, and their employees and volunteers shall be indemnified by the parent of a student authorized to carry an epinephrine auto-injector for any and all liability with respect to the student's use of an epinephrine auto-injector pursuant to this paragraph.

2. A public school may purchase a supply of epinephrine auto-injectors from a wholesale distributor as defined in s. 499.003 or may enter into an arrangement with a wholesale distributor or manufacturer as defined in s. 499.003 for the epinephrine auto-injectors at fair-market, free, or reduced prices for use in the event a student has an anaphylactic reaction. The epinephrine auto-injectors must be maintained ~~and maintain~~ in a ~~locked,~~ secure location on the public school's ~~its~~ premises ~~a supply of epinephrine auto-injectors for use if a~~

~~student is having an anaphylactic reaction~~. The participating school district shall adopt a protocol developed by a licensed physician for the administration by school personnel who are trained to recognize an anaphylactic reaction and to administer an epinephrine auto-injection. The supply of epinephrine auto-injectors may be provided to and used by a student authorized to self-administer epinephrine by auto-injector under subparagraph 1. or trained school personnel.

3. The school district and its employees, ~~and~~ agents, and ~~including~~ the physician who provides the standing protocol for school epinephrine auto-injectors~~,~~ are not liable for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is having an anaphylactic reaction:

a. Unless the trained school personnel's action is willful and wanton;

b. Notwithstanding that the parents or guardians of the student to whom the epinephrine is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable; and

c. Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced registered nurse practitioner.

Section 3. Subsection (17) of section 1002.42, Florida Statutes, is amended to read:

1002.42 Private schools.—

(17) EPINEPHRINE SUPPLY.—

(a) A private school may purchase a supply of epinephrine auto-injectors from a wholesale distributor as defined in s. 499.003 or may enter into an arrangement with a wholesale distributor or manufacturer as defined in s. 499.003 for the epinephrine auto-injectors at fair-market, free, or reduced prices for use in the event a student has an anaphylactic reaction. The epinephrine auto-injectors must be maintained ~~and maintain~~ in a ~~locked,~~ secure location on the private school's ~~its~~ premises ~~a supply of epinephrine auto-injectors for use if a student is having an anaphylactic reaction~~. The participating private school shall adopt a protocol developed by a licensed physician for the administration by private school personnel who are trained to recognize an anaphylactic reaction and to administer an epinephrine auto-injection. The supply of epinephrine auto-injectors may be provided to and used by a student authorized to self-administer epinephrine by auto-injector under s. 1002.20(3)(i) or trained school personnel.

(b) The private school and its employees, ~~and~~ agents, and ~~including~~ the physician who provides the standing protocol for school epinephrine auto-injectors~~,~~ are not liable for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel who follow the adopted protocol and whose professional opinion is that the student is having an anaphylactic reaction:

1. Unless the trained school personnel's action is willful and wanton;

2. Notwithstanding that the parents or guardians of the student to whom the epinephrine is administered have not been provided notice or have not signed a statement acknowledging

that the school district is not liable; and

3. Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced registered nurse practitioner.

Section 4. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1256
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Alternative Sanctioning
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Fav/CS**
2.	Harkness	Sadberry	ACJ	**Recommend: Favorable**
3.	Harkness	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1256 creates an alternative sanctioning program (program) for technical violations of probation. The bill defines "technical violation" as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and Department of Corrections, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

An eligible probationer who commits a technical violation may choose to participate in the program and admit to the violation, comply with a probation officer's recommended sanctions, and waive his or her right to a hearing on the violation. A probation officer's recommended alternative sanction must be reviewed by the court, which may approve the sanction or remove the probationer from the program.

The bill has a positive indeterminate fiscal impact on state and local funds.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Probation

Any person who is found guilty by a jury or the court sitting without a jury or who enters a plea of guilty or nolo contendre may be placed on probation regardless of whether adjudication is withheld.[1] The court determines the terms and conditions of probation. The standard conditions of probation that do not require oral pronouncement, include:

- Report to the probation and parole supervisors as directed;
- Permit such supervisors to visit him or her at his or her home or elsewhere;
- Work faithfully at suitable employment insofar as may be possible;
- Remain within a specified place;
- Live without violating any law;
- Make reparation or restitution to the aggrieved party;
- Repayment of debt to a county or municipal detention facility for medical care, treatment received;
- Payment of any fees due;
- Not associate with persons engaged in criminal activities; and
- Submit to random testing.[2]

When a defendant is placed on probation the Department of Corrections ("department") provides immediate officer supervision. Private entities may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court.[3]

Section 948.06, F.S., provides procedures regarding a violation of the terms and conditions required of a person on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.

If the probationer denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation. Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation. If the court finds that the probationer has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.

If probation is revoked, the court must adjudicate the probationer guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the probationer was placed on probation or into community control.

[1] Section 948.01(1) F.S.
[2] Section 948.03(1), F.S.
[3] Section 948.01(1)(a), F.S.

Technical Violations

Section 948.06(1)(g), F.S., provides that the chief judge of each judicial circuit may direct the department to use a notification letter of a technical violation in lieu of a violation report when the alleged violation is not a new felony or misdemeanor.

During Fiscal Year 2014-2015, approximately 94,000 violation reports were submitted to the court due to probation violations. Of this number, 61,777 (or 66%) were technical violations. Because of overcrowded court dockets, it often takes weeks and multiple hearings for a probationer to be sentenced as the result of a violation of probation. If the probationer is charged with a technical violation, these hearings often result in the court reinstating or modifying the probation with additional sanctions imposed. If the probationer is held in jail pending a violation hearing, he or she may lose employment and be unable to pay victim restitution, attend treatment, or comply with supervision requirements.[4]

In an effort to improve the violation of probation process, the department's Office of Community Corrections developed the Alternative Sanctions Program to reduce recidivism for supervised probationers by utilizing collaborative efforts between courts, probation, and law enforcement. The program, created through administrative order in each circuit, allows a technical violation to be addressed immediately with the probationer through an administrative process. Circuit court judges in 12 counties within six judicial circuits have agreed to implement the Alternative Sanctions Program via administrative order, including Alachua, Brevard, Desoto, Flagler, Manatee, Palm Beach, Pinellas, Putnam, Sarasota, Seminole, St. Johns, and Volusia.[5]

III. Effect of Proposed Changes:

The bill codifies current practice by creating an alternative sanctioning program ("program") for technical violations of probation. The bill defines technical violations as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and the department, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

If an eligible offender on probation is alleged to have committed a technical violation, the offender may either waive participation in the program or elect to participate. By participating in the program, the offender admits to the violation, agrees to the probation officer's recommended sanction, and waives the right to:

- Be represented by legal counsel;
- Require the state to prove his or her quilt before a neutral and detached hearing body;
- Subpoena witnesses and present to a judge evidence in his or her defense;
- Confront and cross-examine adverse witnesses; and
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.

[4] Department of Corrections Legislative Bill Analysis 2016 SB 1256. (On file with the Florida Senate Criminal Justice Committee.)
[5] Id.

Before imposing the sanction, the probation officer must submit the recommended sanction and documentation of the offender's admission of violation and agreement with the sanction to the court. The court has the discretion to impose the recommended sanction or to direct the department to submit a violation report, affidavit, and warrant like a normal case not in the program. Any participation by the offender in the program is solely voluntary and the offender may elect to discontinue participation in the program as long as it is before the issuance of the court order imposing the recommended sanction. When an offender quits the program, the probation officer may submit a violation report, affidavit, and warrant to the court concerning the violation. Any prior admission by the offender may not be used as evidence in subsequent proceedings.

The chief judge, in order to establish the program, must issue an administrative order specifying eligibility, which technical violations will be eligible for program, which sanctions may be recommended by a probation officer, and the process for reporting violations of the program.

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, alternative sanctioning programs may decrease expenditures by reducing law enforcement arrests, jail incarceration of offenders pending technical violation hearings, probation officer time spent at these violation hearings, and court personnel involved in the violation hearing process. The Criminal Justice Impact Conference from January 29, 2016, concluded that CS/SB 1256 has a negative indeterminate impact on prison beds meaning a positive indeterminate impact on state general revenue funds as well as a positive impact on local funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 948.06 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 1, 2016:
Makes a technical change by replacing the word "paragraph" for "section."

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Brandes

591-02916-16 20161256c1

A bill to be entitled

An act relating to alternative sanctioning; amending s. 948.06, F.S.; authorizing the chief judge of each judicial circuit, in consultation with specified entities, to establish an alternative sanctioning program; defining the term "technical violation"; requiring the chief judge to issue an administrative order when creating an alternative sanctioning program; specifying requirements for the order; authorizing an offender who allegedly committed a technical violation of supervision to waive participation in or elect to participate in the program, admit to the violation, agree to comply with the recommended sanction, and agree to waive certain rights; requiring the probation officer to submit the recommended sanction and certain documentation to the court if the offender admits to committing the violation; authorizing the court to impose the recommended sanction or direct the Department of Corrections to submit a violation report, affidavit, and warrant to the court; specifying that an offender's participation in an alternative sanctioning program is voluntary; authorizing a probation officer to submit a violation report, affidavit, and warrant to the court in certain circumstances; providing an effective date.

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

Section 1. Paragraph (h) of subsection (1) of section 948.06, Florida Statutes, is redesignated as paragraph (i), and a new paragraph (h) is added to that subsection, to read:

591-02916-16 20161256c1

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(1)

(h)1. The chief judge of each judicial circuit, in consultation with the state attorney, the public defender, and the department, may establish an alternative sanctioning program in which the department, after receiving court approval, may enforce specified sanctions for certain technical violations of supervision. For purposes of this paragraph, the term "technical violation" means any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.

2. To establish an alternative sanctioning program, the chief judge must issue an administrative order specifying:

a. Eligibility criteria.

b. The technical violations that are eligible for the program.

c. The sanctions that may be recommended by a probation officer for each technical violation.

d. The process for reporting technical violations through the alternative sanctioning program, including approved forms.

3. If an offender is alleged to have committed a technical violation of supervision that is eligible for the program, the offender may:

a. Waive participation in the alternative sanctioning program, in which case the probation officer may submit a violation report, affidavit, and warrant to the court in accordance with this section; or

b. Elect to participate in the alternative sanctioning program after receiving written notice of an alleged technical violation and a disclosure of the evidence against the offender, admit to the technical violation, agree to comply with the probation officer's recommended sanction if subsequently ordered by the court, and agree to waive the right to:

(I) Be represented by legal counsel.

(II) Require the state to prove his or her guilt before a neutral and detached hearing body.

(III) Subpoena witnesses and present to a judge evidence in his or her defense.

(IV) Confront and cross-examine adverse witnesses.

(V) Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.

4. If the offender admits to committing the technical violation and agrees with the probation officer's recommended sanction, the probation officer must, before imposing the sanction, submit the recommended sanction to the court as well as documentation reflecting the offender's admission to the technical violation and agreement with the recommended sanction.

5. The court may impose the recommended sanction or may direct the department to submit a violation report, affidavit, and warrant to the court in accordance with this section.

6. An offender's participation in an alternative sanctioning program is voluntary. The offender may elect to waive or discontinue participation in an alternative sanctioning program at any time before the issuance of a court order imposing the recommended sanction.

7. If an offender waives or discontinues participation in

an alternative sanctioning program, the probation officer may submit a violation report, affidavit, and warrant to the court in accordance with this section. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.

Section 2. This act shall take effect July 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 Appropriations

BILL:	PCS/SB 1282 (389224)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Dean
SUBJECT:	Fish and Wildlife Conservation Commission
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Favorable**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1282 revises statutes within chapter 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties. Additionally, the bill:

- Offers violators of recreational hunting, freshwater fishing, and saltwater fishing the option of purchasing the respective license or permit rather than paying the cost of such license or permit without actually receiving it in addition to a civil penalty.
- Expands the scope of the civil penalty for illegally killing, taking, possessing, or selling game or fur-bearing animals, while committing burglary or trespassing to include illegally killing, taking, possessing, or selling all fish and wildlife.
- Clarifies that a person possessing certain marine turtle species, hatchlings, or the nests of such marine turtle species commits a third degree felony.
- Clarifies that spearfishing is authorized by the Fish and Wildlife Conservation Commission rule.
- Authorizes, rather than requires, the commission to retain an administrative fee on donations provided by application to the Southeastern Guide Dogs, Inc.

By changing the penalties and allowing the violator an option to obtain a permit or license to bring the individual into compliance with law, the bill has an estimated negative fiscal impact of $85,456 to the Clerks of the Circuit Court and a positive fiscal impact of $50,806 to the FWC.

II. Present Situation:

The Florida Constitution was amended in 1998 to create the Florida Fish and Wildlife Conservation Commission (FWC).[1] The constitution grants the FWC both the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.[2] The FWC additionally has regulatory and executive powers with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission are required to be prescribed by general law.[3]

Certain regulatory functions from three separate agencies, the Game and Freshwater Fish Commission, the Marine Fisheries Commission, and the Department of Environmental Protection, were combined to create the FWC.[4] Beginning in 2005, FWC staff began reviewing all recreational wildlife, freshwater fishing, and saltwater fishing penalties, with the goal of proposing a four-level penalty structure to the Legislature which would provide consistency.[5] In 2006, the Legislature adopted the recommended structure, which provided four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.[6]

In 2008, ch. 370, F.S., relating to the state's marine fisheries, and ch. 372, F.S, relating to the state's wildlife and freshwater fisheries statutes, were consolidated into ch. 379, F.S.[7] The four-level penalty structure was retained, but revised to bring in the majority of FWC's recreational hunting, freshwater fishing, and saltwater fishing violations into one section. Section 379.401, F.S., provides a listing of penalties and violations by level.[8]

Level One Violations

A person commits a Level One violation if he or she violates any of the following provisions:

- Rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.
- Rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the FWC.
- Rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.
- Rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., providing for recreational licenses to hunt, fish, and trap.

[1] FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 2 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).
[2] Section 9, Art. IV, Fla. Const.
[3] *Id*.
[4] FWC at 3.
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] Section 379.401, F.S.

- Section 379.3581, F.S., providing hunter safety course requirements.
- Section 379.3003, F.S., prohibiting deer hunting unless required clothing is worn.[9]

The penalties for Level One violations are as follows:

Level One violation	Type of Infraction	Civil Penalty
1st offense for failure to possess the required license or permit under s. 379.354, F.S.	Noncriminal[10]	$50 plus the cost of the license or permit[11]
2nd offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1st offense.	Noncriminal[12]	$100 plus the cost of the license or permit[13]
1st offense not involving s. 379.354, F.S., license or permit requirements.	Noncriminal[14]	$50[15]
2nd offense not involving s. 379.354, F.S., license or permit[16] requirements within 36 months of 1st offense.	Noncriminal[17]	$100[18]

Level Two Violations

A person commits a Level Two violation if he or she violates any of the following provisions:

- Rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- Rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- Rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- Rules or orders relating to the feeding of saltwater fish.
- Rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- Rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- Rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- Rules or orders relating to the use of dogs for the taking of wildlife.
- Rules or orders which are not otherwise classified.
- Rules or orders prohibiting the unlawful use of finfish traps.
- All prohibitions of ch. 379, F.S., which are not otherwise classified.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., prohibiting the obstruction of waterways with net gear.

[9] Section 379.401(1)(a), F.S.
[10] Section 379.401(1)(b), F.S.
[11] Section 379.401(1)(c)1., F.S.
[12] Section 379.401(1)(b), F.S.
[13] Section 379.401(1)(c)2., F.S.
[14] Section 379.401(1)(b), F.S.
[15] Section 379.401(1)(d)1., F.S.
[16] Section 379.401(1)(d)2., F.S.
[17] Section 379.401(1)(b), F.S.
[18] Section 379.401(1)(d)2., F.S.

- Section 379.413, F.S., prohibiting the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
- Section 379.366(4)(b), F.S., prohibiting the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
- Section 379.357, F.S., prohibiting the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., prohibiting the intentional harassment of hunters, fishers, or trappers.[19]

The penalties for Level Two violations are as follows:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense	2nd Degree Misdemeanor[20]	Max. $500 or Max. 60 days	None
2nd offense within three years of previous Level Two violation (or higher)	1st Degree Misdemeanor[21]	Min. $250; Max. $1000 or Max. one year	None
3rd offense within five years of two previous Level Two violations (or higher)	1st Degree Misdemeanor[22]	Min. $500; Max. $1000 or Max. one year	Max. suspension of license for one year
4th offense within ten years of three previous Level Two violations (or higher)	1st Degree Misdemeanor[23]	Min. $750; Max. $1000 or Max. one year	Max. suspension of license for three years

Level Three Violations

A person commits a Level Three violation if he or she violates any of the following provisions:

- Rules or orders prohibiting the sale of saltwater fish.
- Rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(2), F.S., establishing major violations.
- Section 379.407(4), F.S, prohibiting the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., prohibiting the importation of freshwater fish.
- Section 379.354(17), F.S., prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., prohibiting the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., prohibiting the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., prohibiting the possession and transportation of commercial quantities of freshwater game fish.[24]

[19] Section 379.401(2)(a), F.S.
[20] Section 379.401(2)(b)1., F.S.
[21] Section 379.401(2)(b)2., F.S.
[22] Section 379.401(2)(b)3., F.S.
[23] Section 379.401(2)(b)4., F.S.
[24] Section 379.401(3)(a), F.S.

The penalties for Level Three violations are as follows:

Level Three violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense	1st Degree Misdemeanor[25]	Max. $1000/ Max. one year	None
2nd offense within ten years of previous Level Three violation (or higher)	1st Degree Misdemeanor[26]	Min. $750; Max. $1000/ Max. one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1st Degree Misdemeanor	Mandatory $1000[27]/ Max. one year	May not acquire license or permit for five years

Level Four Violations

A person commits a Level Four violation if he or she violates any of the following provisions:

- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., prohibiting the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., prohibiting the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.[28]

The penalties for Level Four violations are as follows:

Level Four violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense[29]	3rd Degree Felony	Max. $5000/ Max. five years	None

Section 379.401(4)(b), F.S., only references ss. 775.082 and 775.083, F.S., in relation to the punishment available for third degree felonies. Section 775.084, F.S., relating to enhanced penalties for habitual felony offenders or habitual violent felony offenders, is not included.

Section 379.401(5), F.S., provides an additional "catch-all" provision that makes violations of ch. 379, F.S., except as provided elsewhere, for a first offense, a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days or up to a $500

[25] Section 379.401(3)(b)1., F.S.
[26] Section 379.401(3)(b)2., F.S.
[27] Section 379.401(3)(b)3., F.S.
[28] Section 379.401(4)(a), F.S.
[29] Section 379.401(4)(b), F.S.

fine. For second or subsequent violations, the person commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or up to a $1,000 fine.[30]

Section 379.401(6), F.S., authorizes the court to order the suspension or forfeiture of any license or permit issued under ch. 379, F.S., to a person who is found guilty of committing a violation of the chapter.

In 2014, the FWC staff began to review all fish, wildlife, and recreational penalties to ensure that they were "fair, appropriate, meaningful, and consistent."[31] The FWC staff discovered, that while the revision in 2008 consolidated a majority of the penalties into the four-level structure, there are statutes relating to recreational activities which have penalties outside of the structure.[32] These penalty violations include:

- Section 379.2223, F.S., relating to the control and management of state game lands, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.2257, F.S., relating to cooperative agreements with the U.S. Forest Service.
- Section 379.29, F.S., relating to contaminating fresh waters, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.3511, F.S., relating to the appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.411, F.S., relating to the killing or wounding of any species designated as endangered, threatened, or of special concern, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.
- Section 379.4115, F.S., relating to the Florida or wild panther, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

In addition to statutes that have penalties outside of the four-level structure, there are statutes within ch. 379, F.S., which do not have specified penalties. Section 379.401(2)(a)11 and (5), F.S., both address penalties for prohibitions or violations that are not covered in ch. 379, F.S.

Section 379.401(2)(a)11., F.S., states:

> (2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:
> 11. All prohibitions in this chapter which are not otherwise classified.[33]

Section 379.401(5), F.S., states:

> (5) VIOLATIONS OF CHAPTER.—Except as provided in this chapter:

[30] Section 379.401(5), F.S.
[31] FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 7 (Oct. 23, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[32] *Id*.
[33] Section 379.401(2)(a)11., F.S.

> (a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
> (b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.[34]

III. Effect of Proposed Changes:

This bill revises various statutes within ch. 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties.

Revisions to Clarify Penalties without Changing the Penalty

Level Two Violations

In ch. 379, F.S., there are multiple sections that do not have a specified penalty. Therefore, the penalty defaults to either a Level Two violation pursuant to s. 379.401(2)(a)11., F.S., or to a second or first degree misdemeanor pursuant to s. 379.401(5), F.S. The bill amends the following sections that do not have specified penalties to clarify that the violations of such sections are Level Two violations:

- Section 379.2425, F.S., relating to spearfishing.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting the loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

Level Four Violations

In ch. 379, F.S., there are sections that have penalties for violations specified as third degree felonies. The bill amends the following sections to state that the penalties for the violation of the following statues are Level Four violations, which are punishable as third degree felonies:

- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilian or their eggs.
- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

[34] Section 379.401(5), F.S.

Section 379.354, F.S., relating to Recreational Licenses and Permits

In s. 379.354, F.S., there are only specified violations for subsections (16) and (17). Therefore, violations of the rest of the section should be Level Two violations by default pursuant to s. 379.401(2)(a)11 or second or first degree misdemeanors pursuant to s. 379.401(5). However, there is a cross-reference in s. 379.401, F.S., which lists violations of subsections (1) through (15) of s. 379.354, F.S., as Level One violations. The bill amends s. 379.354, F.S., to clarify that a person who violates such section, unless otherwise provided, commits a Level One violation under s. 379.401, F.S.

Section 379.365, F.S., relating to Stone Crab Regulations

Any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags under current law commits a Level Two violation. Because violations relating to the conservation of marine resources are provided in s. 379.407, F.S., the bill removes the Level Two violation. Therefore, any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags is subject to the following penalties:

- Upon a first conviction; imprisonment for a period of not more than 60 days, a fine of not less than $100 nor more than $500, or both the fine and imprisonment.
- On a second or subsequent conviction within 12 months; imprisonment for not more than six months, a fine of not less than $250 nor more than $1,000, or both the fine and imprisonment.[35]

Increases or Decreases to Penalties

In ch. 379, F.S., there are sections that have penalties for violations specified as second degree misdemeanors. The penalties for second degree misdemeanors are equivalent to Level Two violations, except that the penalties for repeat offenders are increased for Level Two violations. The bill amends the following sections to change the penalties from second degree misdemeanors to Level Two violations:

- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.

Section 379.2223, F.S., provides that the penalty for violating rules necessary for the protection, control, operation, management, or development of lands or waters owned, leased, or otherwise assigned to the FWC for fish and wildlife management purposes is a second degree misdemeanor. The bill amends this section and provides that a person who violates or fails to comply with such rules is subject to penalties as provided in s. 379.401, F.S.

Section 379.2257, F.S., provides that the penalty for violations of rules on areas under a cooperative agreement with the United States Forest Service is a second degree misdemeanor. The bill amends this section to be consistent with the penalties on all other wildlife management areas and provides that a person who violates such rules is subject to penalties as provided in s. 379.401, F.S.

[35] Section 379.407(1), F.S.

The bill amends s. 379.357, F.S., to increase the penalty for the illegal sale of tarpon from a Level Two violation to a Level Three violation. This brings consistency with the penalties for violation of rules or orders prohibiting the sale of saltwater species. Additionally, the bill clarifies that the illegal taking, killing, or possessing of tarpon is a Level Two violation.

Section 379.401, F.S., relating to Penalties and Violations

The bill substantially amends s. 379.401, F.S. to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within with the four-level penalty structure.

Level One Violations

The bill adds the penalties for violating rules or orders relating to the filing of reports and other documents required by persons holding alligator licenses and permits to the list of Level One violations. Also added to the list of Level One violations are the penalties for violating rules or orders requiring the return of unused Convention on International Trade in Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

Under current law, the civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354, F.S., is $50 plus the cost of the license or permit. If the person has previously committed the same Level One violation within the preceding 36 months, the civil penalty is $100 plus the cost of the license or permit. The bill provides an alternative for people who violate the license and permit requirements of s. 379.354, F.S., except violations of subsection (6) relating to pier licenses, subsection (7) relating to vessel licenses, paragraph (8)(f) relating to special use permits for limited entry hunting and fishing activities, or paragraph (8)(h) relating to recreational user permits. A person would be able to purchase the license or permit rather than paying the cost of the license or permit as part of the civil penalty. The bill requires submission of the proof of purchase of the license or permit with the civil penalty. Additionally, the bill increases the civil penalty for any person who has previously committed the same Level One violation within the preceding 36 months from $100 to $250.

Level Two Violations

The bill adds the following references to the list of Level Two violations (these were Level Two violations by default or were revised to Level Two violations):

- Rules or orders requiring the maintenance of records relating to alligators.
- Return of unused CITES tags issued under alligator programs other than the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Section 379.2425, F.S., relating to spearfishing.
- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.

- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

The bill removes ss. 379.33 and 379.407(7), F.S., from the list of Level Two violations. Section 379.33, F.S., was amended to remove the penalty provided in the section because it was an inaccurate statement. This section no longer contains a Level Two violation and, consequently, its cross-reference is removed from the list of penalties. Section 379.407(7), F.S., provides penalties for the unlicensed sale, purchase, or harvest relating to commercial saltwater fishing activities. As s. 379.401, F.S., provides penalties related to recreational activities, the bill removes the cross-reference to s. 379.407(7), F.S., from the section.

The bill amends the following references already on the Level Two list:
- Rules or orders of the commission prohibiting the unlawful use of finfish traps, to reference any traps, unless otherwise provided.
- Section 379.2421, F.S., for consistency.
- Section 379.357, F.S., to clarify that only a violation of subsection (3) of that section, prohibiting the take, kill, or possession of tarpon without purchasing a tarpon tag, is a Level Two violation.
- Section 379.365(2)(a), F.S., to remove the provision prohibiting the possession or use of stone crab traps without trap tags.
- Section 379.3671(2)(c), F.S., to remove the reference prohibiting the possession or use of spiny lobster traps without trap tags or certificates.
- All prohibitions in this chapter which are not otherwise classified, to include all requirements in this chapter which are not otherwise classified.

Level Three Violations

The bill clarifies that not all violations within s. 379.407(2), F.S., are Level Three violations and adds the penalty for violating s. 379.357(4), F.S., which prohibits the sale, transfer, or purchase of tarpon.

Level Four Violations

The bill amends the following references already on the Level Four list to clarify that there are other penalties within those provisions that are not Level Four violations:
- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.

The bill adds the following sections to the list of Level Four violations (these were third degree felonies):

- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

The bill amends the penalty for a Level Four violation to include s. 775.084, F.S., relating to penalties for habitual felony offenders.

Illegal Activities While Committing Burglary or Trespass

The bill repeals s. 379.403, F.S., relating to the taking of game or fur-bearing animals while committing burglary or trespass, and moves the language to s. 379.401, F.S., with the following changes:

- Adds violations pertaining to orders which prohibit the killing, taking, possessing or selling of fish and wildlife.
- Increases the penalty from a $250 fine to a $500 fine.
- Expands the scope from game[36] or fur-bearing animals[37] to all fish and wildlife.

Violations of the Chapter

The bill removes s. 379.401(5), F.S., which provides an additional catch-all provision. However, s. 379.401(2)(a)13., F.S., retains the catchall that provides that all requirements or prohibitions in ch. 379, F.S., which are not otherwise classified are Level Two violations.

Additional Changes

The bill amends s. 379.2425, F.S., to clarify that spearfishing is authorized under certain circumstances by FWC rule or order.[38]

The bill amends s. 379.2431, F.S., to prohibit knowingly possessing any marine turtle or the eggs or nests of marine turtles and to prohibit knowingly possessing, taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle hatchling, or parts thereof. The bill provides that a person, firm, or corporation that illegally possesses any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in s. 379.2431, F.S., commits a felony of the third degree, punishable by a term of imprisonment of up to five years or a maximum fine of $5,000 or additional penalties for violent or habitual felony offenders. The bill clarifies that a person, firm, or corporation may not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any hatchling, or parts thereof, of any marine turtle species unless authorized by FWC rule.

[36] The term "game" is defined by s. 379.101, F.S., to mean "deer, bear, squirrel, rabbits, and, where designated by commission rules, wild hogs, ducks, geese, rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse, pheasants, quail, and doves."
[37] The term "fur-bearing animals" is defined by s. 379.101, F.S., to mean "muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, and opossum."
[38] Rule 68B-20.003, F.A.C., authorizes spearfishing if provided in other marine fisheries rules.

The bill amends s. 379.33, F.S., to strike language relating to an inaccurate statement that states "except as provided under s. 379.401, F.S., any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1)." This statement is inaccurate because violators of FWC rules may also be punished under s. 379.4015, F.S., or ch. 327, F.S., for example.[39]

The bill amends s. 379.3502, F.S., to remove language prohibiting a person from altering or changing in any manner any license or permit issued pursuant to ch. 379, F.S. The section covers illegally loaning or transferring a permit and not altering or changing a permit. Section 379.354(16), F.S., makes forging or counterfeiting permits a Level Four violation.

The bill amends s. 379.357, F.S., to clarify that the purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of FWC rule.

Individuals purchasing a license or permit from the FWC may voluntarily authorize an additional payment of $2 with their application fee to be provided to the Southeastern Guide Dogs, Inc.[40] The bill amends s. 379.359, F.S., to authorize, rather than require, the FWC to retain $0.90 of the fee. This enables the FWC to send the full amount to Southeastern Guide Dogs Inc., minus administrative costs.

The bill takes effect July 1, 2016.

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.

[39] FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 18 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).
[40] Section 379.359, F.S.

B. Private Sector Impact:

As the penalties for some violations are increased or decreased, PCS/SB 1282 may have an indeterminate fiscal impact on individuals who violate ch. 379, F.S.

Southeastern Guide Dogs, Inc. may receive an indeterminate positive fiscal impact if applicants for recreational hunting or fishing licenses choose to donate $2 to the charity. Under the bill, the provision requiring FWC to retain $0.90 is removed and, therefore, FWC may provide the charity with the full $2, minus administrative costs.

C. Government Sector Impact:

The FWC estimates the net negative impact to the Clerks of the Circuit Court is $85,456 annually. This represents all the changes to violations if the violators choose the alternative option provided under the bill and purchase a license or permit rather than paying the cost of such license or permit when cited for a violation.[41]

There is an estimated positive fiscal impact on the FWC if violators purchase the recreational licenses or permits. The proceeds from license or permit sales would go into different trust funds depending on the type of license or permit being acquired.[42] The FWC has estimated the bill would increase funds collected by $50,806 annually.[43]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 379.2223, 379.2257, 379.2425, 379.2431, 379.29, 379.295, 379.33, 379.3502, 379.3503, 379.3504, 379.3511, 379.354, 379.357, 379.359, 379.363, 379.364, 379.365, 379.3751, 379.3752, 379.401, 379.409, 379.411, and 379.4115.

This bill repeals section 379.403 of the Florida Statutes.

[41] FWC at 20.
[42] *Id*. at 21.
[43] *Id*.

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 February 11, 2016:
The CS removes the definition of the term "fish and wildlife," the cross-reference to the definition, and the sections that contained revisions to cross-references that were necessary as a result of adding the definition to s. 379.401, F.S.

The CS makes it a third degree felony to knowingly possess marine turtles or the eggs or nests of marine turtles. The CS clarifies the prohibition on knowingly taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing to include hatchlings or parts thereof.

B. Amendments:

None.

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576-03420-16

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

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending s. 379.2223, F.S.; revising penalties for violations of commission rules relating to control and management of state game lands; amending s. 379.2257, F.S.; revising penalties for violations of commission rules relating to cooperative agreements with the United States Forest Service; amending s. 379.2425, F.S.; authorizing exceptions to the prohibition on spearfishing; specifying penalties for violating the prohibition; amending s. 379.2431, F.S.; prohibiting certain possession of any marine turtle species or hatchling or parts thereof; providing penalties; amending s. 379.29, F.S.; revising penalties related to the contamination of fresh waters; amending s. 379.295, F.S.; specifying penalties associated with the prohibition on the use of explosives and other substances injurious to fish; amending s. 379.33, F.S.; deleting penalty provisions associated with the general enforcement of commission rules; amending s. 379.3502, F.S.; deleting a provision regarding the alteration of licenses or permits; specifying penalties for the unlawful transfer of a license or permit; amending s. 379.3503, F.S.; specifying penalties for swearing or affirming a false statement in an application for a license or permit; amending s. 379.3504, F.S.; specifying

389224

576-03420-16

penalties for entering false information on an application for a license or permit; amending s. 379.3511, F.S.; revising penalties for violations related to subagent sales of hunting, fishing, and trapping licenses and permits; amending s. 379.354, F.S.; specifying penalties for violations related to recreational licenses, permits, and authorization numbers; amending s. 379.357, F.S.; providing that the purchase of a tarpon tag does not accord the purchaser with certain rights; revising penalties related to the tarpon license program; amending s. 379.359, F.S.; authorizing, rather than requiring, the commission to retain a portion of voluntary contributions for Southeastern Guide Dogs, Inc.; amending s. 379.363, F.S.; specifying penalties for violations related to freshwater fish dealer licenses; amending s. 379.364, F.S.; specifying penalties for violations related to the licensure of fur and hide dealers; amending s. 379.365, F.S.; revising penalties for violations related to stone crabs; amending s. 379.3751, F.S.; specifying penalties for violations related to the taking and possession of alligators; amending s. 379.3752, F.S.; specifying penalties for violations of requirements related to tagging of alligators and alligator hides; amending s. 379.401, F.S.; revising the penalties associated with the violation of commission rules related to the filing of documentation; specifying penalties for the violation of commission rules or orders related to the return of

unused Convention on the International Trade on Endangered Species (CITES) tags; authorizing imposition of a modified penalty for a specified offense if certain conditions are met; specifying that persons who commit certain Level One violations may be required to provide proof of a license or permit to satisfy a citation; providing that violations of commission rules or orders regarding all traps are Level Two violations unless otherwise specified; providing that violations of rules or orders of the commission relating certain alligator-related programs are Level Two violations; providing that certain specified unclassified violations are Level Two violations; revising the levels to which specified violations are assigned; revising penalty provisions for Level Four violations; specifying penalties for certain violations while engaged in trespass; specifying that certain fines collected for trespass violations be deposited in the State Game Trust Fund; repealing s. 379.403, F.S., relating to the illegal killing, taking, possessing, or selling of wildlife or game and related fines; amending s. 379.409, F.S.; revising penalties for the illegal killing, possessing, or capturing of alligators or other crocodilia or crocodilian eggs; amending s. 379.411, F.S.; revising penalties for the unlawful intentional killing or wounding of any species designated as endangered, threatened, or of special concern; amending s. 379.4115, F.S.; revising penalties for the

killing of Florida or wild panthers; providing an effective date.

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

Section 1. Subsection (2) of section 379.2223, Florida Statutes, is amended to read:

379.2223 Control and management of state game lands.—

(2) Any person violating or otherwise failing to comply with any rule or regulation so adopted is subject to penalties as provided in s. 379.401 ~~commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 2. Subsection (3) of section 379.2257, Florida Statutes, is amended to read:

379.2257 Cooperative agreements with United States ~~U.S.~~ Forest Service; penalty.—The Fish and Wildlife Conservation Commission is authorized and empowered:

(3) In addition to the requirements of chapter 120, notice of the making, adoption, and promulgation of the above rules and regulations shall be given by posting said notices, or copies of the rules and regulations, in the offices of the county judges and in the post offices within the area to be affected and within 10 miles thereof. In addition to the posting of said notices, as aforesaid, copies of said notices or of said rules and regulations shall also be published in newspapers published at the county seats of Baker, Columbia, Marion, Lake, Putnam, and Liberty Counties, or so many thereof as have newspapers, once not more than 35 nor less than 28 days and once not more than 21 nor less than 14 days prior to the opening of the state

hunting season in said areas. Any person violating any rules or regulations promulgated by the commission to cover these areas under cooperative agreements between the Fish and Wildlife Conservation Commission and the United States Forest Service is subject to penalties as provided in s. 379.401~~, none of which shall be in conflict with the laws of Florida, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 3. Paragraph (a) of subsection (2) of section 379.2425, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

379.2425 Spearfishing; definition; limitations; penalty.—

(2)(a) Except as otherwise provided by commission rule or order, spearfishing is prohibited within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys, which includes all salt waters under the jurisdiction of the Fish and Wildlife Conservation Commission beginning at the county line between Miami-Dade and Monroe Counties and running south, including all of the keys down to and including Long Key.

(4) A person who violates this section commits a Level Two violation under s. 379.401.

Section 4. Paragraphs (d) and (e) of subsection (1) of section 379.2431, Florida Statutes, are amended to read:

379.2431 Marine animals; regulation.—

(1) PROTECTION OF MARINE TURTLES.—

(d) Except as authorized in this paragraph, or unless otherwise provided by the Federal Endangered Species Act or its implementing regulations, a person, firm, or corporation may

not~~:~~

~~1. Knowingly possess the eggs of any marine turtle species described in this subsection.~~

~~2.~~ knowingly possess, take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any marine turtle species or hatchling, or parts thereof, ~~turtles~~ or the eggs or nest of any marine turtle species ~~turtles~~ described in this subsection. The commission may:

1.~~3.~~ ~~The commission may~~ Issue a special permit or loan agreement to a ~~any~~ person, firm, or corporation~~, to enable the holder~~ to possess a marine turtle species or hatchling, or parts thereof, including nests or~~,~~ eggs~~, or hatchlings~~, for scientific, education, or exhibition purposes, or for conservation activities such as the relocation of nests, eggs, or marine turtles or hatchlings away from construction sites. Notwithstanding other provisions of law, the commission may issue such special permit or loan agreement to a ~~any~~ properly accredited person as defined in paragraph (c) for the purposes of marine turtle conservation.

2.~~4.~~ ~~The commission shall have the authority to~~ Adopt rules pursuant to chapter 120 to prescribe terms, conditions, and restrictions for marine turtle conservation, and to permit the possession of marine turtle species or hatchlings, ~~turtles~~ or parts thereof, including nests or eggs.

(e)1. A ~~Any~~ person, firm, or corporation that commits any act prohibited in paragraph (d) involving any egg of any marine turtle species described in this subsection shall pay a penalty of $100 per egg in addition to other penalties provided in this paragraph.

2. A ~~Any~~ person, firm, or corporation that illegally possesses 11 or fewer ~~of any~~ eggs of any marine turtle species described in this subsection commits a first degree misdemeanor, punishable as provided in ss. 775.082 and 775.083.

3. For a second or subsequent violation of subparagraph 2., a ~~any~~ person, firm, or corporation that illegally possesses 11 or fewer ~~of any~~ eggs of any marine turtle species described in this subsection commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. A ~~Any~~ person, firm, or corporation that illegally possesses more than 11 ~~of any~~ eggs of any marine turtle species described in this subsection commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

5. A ~~Any~~ person, firm, or corporation that illegally takes, disturbs, mutilates, destroys, causes to be destroyed, transfers, sells, offers to sell, molests, or harasses any marine turtle species or hatchling, or parts thereof, or the eggs or nest of any marine turtle species ~~as~~ described in this subsection, commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

6. A person, firm, or corporation that illegally possesses any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in this subsection, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

7.~~6.~~ Notwithstanding s. 777.04, a ~~any~~ person, firm, or corporation that solicits or conspires with another person, firm, or corporation, to commit an act prohibited by this subsection commits a felony of the third degree, punishable as

provided in s. 775.082, s. 775.083, or s. 775.084.

8.~~7.~~ The proceeds from the penalties assessed pursuant to this paragraph shall be deposited into the Marine Resources Conservation Trust Fund.

Section 5. Subsection (2) of section 379.29, Florida Statutes, is amended to read:

379.29 Contaminating fresh waters.—

(2) A ~~Any~~ person, firm, or corporation violating ~~any of the provisions of~~ this section commits a Level Two violation under s. 379.401 ~~shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 for the first offense, and for the second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 6. Section 379.295, Florida Statutes, is amended to read:

379.295 Use of explosives and other substances prohibited.—No person may throw or place, or cause to be thrown or placed, any dynamite, lyddite, gunpowder, cannon cracker, acids, filtration discharge, debris from mines, Indian berries, sawdust, green walnuts, walnut leaves, creosote, oil, or other explosives or deleterious substance or force into the fresh waters of this state whereby fish therein are or may be injured. Nothing in this section may be construed as preventing the release of water slightly discolored by mining operations or water escaping from such operations as the result of providential causes. A person who violates this section commits a Level Two violation under s. 379.401.

Section 7. Section 379.33, Florida Statutes, is amended to

read:

379.33 Enforcement of commission rules~~; penalties for violation of rule~~.—Rules of the Fish and Wildlife Conservation Commission shall be enforced by any law enforcement officer certified pursuant to s. 943.13. ~~Except as provided under s. 379.401, any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).~~

Section 8. Section 379.3502, Florida Statutes, is amended to read:

379.3502 License and permit not transferable.—A person may not ~~alter or change in any manner, or~~ loan or transfer to another, unless otherwise provided, any license or permit issued pursuant to ~~the provisions of~~ this chapter, and such license or permit may be used only by ~~nor may any other person, other than~~ the person to whom it is issued. A person who violates this section commits a Level Two violation under s. 379.401~~, use the same~~.

Section 9. Section 379.3503, Florida Statutes, is amended to read:

379.3503 False statement in application for license or permit.—A ~~Any~~ person who swears or affirms to any false statement in any application for license or permit provided by this chapter commits a Level Two violation under s. 379.401, ~~is guilty of violating this chapter, and shall be subject to the penalty provided in s. 379.401,~~ and any false statement contained in any application for such license or permit renders the license or permit void.

Section 10. Section 379.3504, Florida Statutes, is amended

to read:

379.3504 Entering false information on licenses or permits.—Whoever knowingly and willfully enters false information on, or allows or causes false information to be entered on or shown upon, any license or permit issued under ~~the provisions of~~ this chapter in order to avoid prosecution, or to assist another in avoiding ~~to avoid~~ prosecution, or for any other wrongful purpose commits a Level Two violation under s. 379.401 ~~shall be punished as provided in s. 379.401~~.

Section 11. Paragraphs (d), (e), and (f) of subsection (1) of section 379.3511, Florida Statutes, are amended, and a new subsection (4) is added to that section, to read:

379.3511 Appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits.—

(1) Subagents shall serve at the pleasure of the commission. The commission may establish, by rule, procedures for the selection and appointment of subagents. The following are requirements for subagents so appointed:

~~(d) Any person who willfully violates any of the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(d) ~~(c)~~ A subagent may charge and receive as his or her compensation 50 cents for each license or permit sold. This charge is in addition to the sum required by law to be collected for the sale and issuance of each license or permit. This charge does not apply to the shoreline fishing license; however, for each shoreline fishing license issued, the subagent may retain 50 cents from other license proceeds otherwise due the commission.

(e) ~~(f)~~ A subagent shall submit payment for and report the sale of licenses and permits to the commission as prescribed by the commission.

(4) A person who willfully violates this section commits a Level Two violation under s. 379.401.

Section 12. Subsection (18) is added to section 379.354, Florida Statutes, to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(18) PENALTY.—Unless otherwise provided, a person who violates this section commits a Level One violation under s. 379.401.

Section 13. Subsections (3) through (7) of section 379.357, Florida Statutes, are amended to read:

379.357 Fish and Wildlife Conservation Commission license program for tarpon; fees; penalties.—

(3) An individual may not take, kill, or possess any fish of the species *Megalops atlanticus*, commonly known as tarpon, unless the individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish.

~~(4) Any individual including a taxidermist who possesses a tarpon which does not have a tag securely attached as required by this section commits a Level Two violation under s. 379.401. Provided, however,~~ A taxidermist may remove the tag during the process of mounting a tarpon, but the tag must~~. The removed tag shall~~ remain with the fish during any subsequent storage or shipment. Purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of commission rule. A person who violates this subsection commits a

Level Two violation under s. 379.401.

(4) ~~(5)~~ An ~~Purchase of a tarpon tag shall not accord the purchaser any right to harvest or possess tarpon in contravention of rules adopted by the commission. No~~ individual may not sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase, or purchase any species of fish known as tarpon. A person who violates this subsection commits a Level Three violation under s. 379.401.

(5) ~~(6)~~ The commission shall prescribe and provide suitable forms and tags necessary to administer ~~carry out the provisions of~~ this section.

(6) ~~(7) The provisions of~~ This section does ~~shall~~ not apply to a person ~~anyone~~ who immediately returns a tarpon, uninjured, to the water at the place where the fish was caught.

Section 14. Section 379.359, Florida Statutes, is amended to read:

379.359 License application provision for voluntary contribution to Southeastern Guide Dogs, Inc.—The application for any license for recreational activities issued under this part must include a check-off provision that permits the applicant for licensure to make a voluntary contribution of $2. The Fish and Wildlife Conservation Commission may ~~shall~~ retain up to 90 cents from each contribution to cover administrative costs. The remainder shall be distributed quarterly by the Fish and Wildlife Conservation Commission to Southeastern Guide Dogs, Inc., located in Palmetto. Southeastern Guide Dogs, Inc., shall use the contributions to breed, raise, and train guide dogs for the blind, specifically for the "Paws for Patriots" program,

including in-residence training for veterans who are provided guide dogs by Southeastern Guide Dogs, Inc.

Section 15. Subsection (4) is added to section 379.363, Florida Statutes, to read:

379.363 Freshwater fish dealer's license.—

(4) A person who violates this section commits a Level Two violation under s. 379.401.

Section 16. Subsection (5) is added to section 379.364, Florida Statutes, to read:

379.364 License required for fur and hide dealers.—

(5) A person who violates this section commits a Level Two violation under s. 379.401.

Section 17. Paragraph (a) of subsection (2) of section 379.365, Florida Statutes, is amended to read:

379.365 Stone crab; regulation.—

(2) PENALTIES.—For purposes of this subsection, conviction is any disposition other than acquittal or dismissal, regardless of whether the violation was adjudicated under any state or federal law.

(a) It is unlawful to violate commission rules regulating stone crab trap certificates and trap tags. A ~~No~~ person may not use an expired tag or a stone crab trap tag not issued by the commission or possess or use a stone crab trap in or on state waters or adjacent federal waters without having a trap tag required by the commission firmly attached to the trap ~~thereto~~.

~~1.~~ In addition to any other penalties provided in s. 379.407, the following administrative penalties apply to a ~~for any~~ commercial harvester who violates this paragraph~~:, the following administrative penalties apply.~~

1.~~a.~~ For a first violation, the commission shall assess an administrative penalty of up to $1,000.

2.~~b.~~ For a second violation that occurs within 24 months of any previous such violation, the commission shall assess an administrative penalty of up to $2,000 and the stone crab endorsement under which the violation was committed may be suspended for 12 calendar months.

3.~~c.~~ For a third violation that occurs within 36 months of any previous two such violations, the commission shall assess an administrative penalty of up to $5,000 and the stone crab endorsement under which the violation was committed may be suspended for 24 calendar months.

4.~~d.~~ A fourth violation that occurs within 48 months of any three previous such violations~~,~~ shall result in permanent revocation of all of the violator's saltwater fishing privileges, including having the commission proceed against the endorsement holder's saltwater products license in accordance with s. 379.407.

~~2. Any other person who violates the provisions of this paragraph commits a Level Two violation under s. 379.401.~~

Any commercial harvester assessed an administrative penalty under this paragraph shall, within 30 calendar days after notification, pay the administrative penalty to the commission, or request an administrative hearing under ss. 120.569 and 120.57. The proceeds of all administrative penalties collected under this paragraph shall be deposited in the Marine Resources Conservation Trust Fund.

Section 18. Subsection (5) is added to section 379.3751,

Florida Statutes, to read:

379.3751 Taking and possession of alligators; trapping licenses; fees.—

(5) A person who violates this section commits a Level Two violation under s. 379.401.

Section 19. Subsection (3) is added to section 379.3752, Florida Statutes, to read:

379.3752 Required tagging of alligators and hides; fees; revenues.—The tags provided in this section shall be required in addition to any license required under s. 379.3751.

(3) A person who violates this section commits a Level Two violation under s. 379.401.

Section 20. Section 379.401, Florida Statutes, is amended to read:

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(1)(a) LEVEL ONE VIOLATIONS.—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold any recreational licenses and permits or any alligator licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use

permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

5. Rules or orders of the commission requiring the return of unused Convention on the International Trade on Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

7.~~5.~~ Section 379.354(1)-(15), providing for recreational licenses to hunt, fish, and trap.

8.~~6.~~ Section 379.3581, providing hunter safety course requirements.

6.~~7.~~ Section 379.3003, prohibiting deer hunting unless required clothing is worn.

(b) A person who commits a Level One violation commits a noncriminal infraction and shall be cited to appear before the county court.

(c)1. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is $50 plus the cost of the license or permit, unless subparagraph 2. applies. Alternatively, a person who violates the license and permit requirements of s. 379.354 and who is subject to the penalties imposed by this subparagraph, except a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), may purchase the license or permit and shall provide proof of such license or permit and pay a civil penalty of $50.

2. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is

$250 ~~$100~~ plus the cost of the license or permit if the person cited has previously committed the same Level One violation within the preceding 36 months. Alternatively, a person who violates the license and permit requirements of s. 379.354 and who is subject to the penalties imposed by this subparagraph, except a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), may purchase the license or permit and shall provide proof of such license or permit and pay a civil penalty of $250.

(d)1. The civil penalty for any other Level One violation is $50 unless subparagraph 2. applies.

2. The civil penalty for any other Level One violation is $250 ~~$100~~ if the person cited has previously committed the same Level One violation within the preceding 36 months.

(e) A person cited for a Level One violation shall sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(f) A person cited for a Level One violation may pay the civil penalty, and, if applicable, provide proof of the license or permit required under s. 379.354, by mail or in person, within 30 days after receipt of the citation. If the civil penalty is paid, the person is ~~shall be~~ deemed to have admitted committing the Level One violation and to have waived his or her right to a hearing before the county court. Such admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violation ~~violations~~.

(g) A person who refuses to accept a citation, ~~who fails~~ to

pay the civil penalty for a Level One violation, or ~~who fails~~ to appear before a county court as required commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(h) A person who elects to, or is required to, appear before the county court is ~~or who is required to appear before the county court shall be~~ deemed to have waived the limitations on civil penalties provided under paragraphs (c) and (d). After a hearing, the county court shall determine if a Level One violation has been committed; ~~,~~ and, if so, may impose a civil penalty of not less than $50 for a first-time violation, and not more than $500 for subsequent violations. A person found guilty of committing a Level One violation may appeal that finding to the circuit court. The commission of a violation must be proved beyond a reasonable doubt.

(i) A person cited for violating the requirements of s. 379.354 relating to personal possession of a license or permit may not be convicted if, prior to or at the time of a county court hearing, he or she ~~the person~~ produces the required license or permit for verification by the hearing officer or the court clerk. The license or permit must have been valid at the time the person was cited. The clerk or hearing officer may assess a $10 fee for costs under this paragraph.

(2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.

2. Rules or orders of the commission establishing bag,

possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.

4. Rules or orders of the commission relating to the feeding of saltwater fish.

5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.

6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.

7. Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.

8. Rules or orders of the commission relating to the use of dogs for the taking of wildlife.

9. Rules or orders of the commission which are not otherwise classified.

10. Rules or orders of the commission prohibiting the unlawful use of ~~finfish~~ traps, unless otherwise provided by law.

11. Rules or orders of the commission which require the maintenance of records relating to alligators.

12. Rules or orders of the commission requiring the return of unused CITES tags issued under an alligator management program other than the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program.

13.~~11.~~ All requirements or prohibitions in this chapter which are not otherwise classified.

~~12. Section 379.33, prohibiting the violation of or noncompliance with commission rules.~~

~~13. Section 379.407(7), prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.~~

15.~~14.~~ Section 379.2421, relating to fishers and equipment, unless otherwise provided in that section ~~prohibiting the obstruction of waterways with net gear~~.

31.~~15.~~ Section 379.413, prohibiting the unlawful taking of bonefish.

16. Section 379.2425, relating to spearfishing.

17. Section 379.29, prohibiting the contamination of fresh waters.

18. Section 379.295, prohibiting the use of explosives and other substances in fresh waters.

19. Section 379.3502, prohibiting loaning, transferring, or using a borrowed or transferred license or permit.

20. Section 379.3503, prohibiting false statements in an application for a license or permit.

21. Section 379.3504, prohibiting entering false information on licenses or permits.

22. Section 379.3511, relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.

23. Section 379.357(3), prohibiting the take, kill, or possession of tarpon without purchasing a tarpon tag.

24. Section 379.363, relating to freshwater fish dealer's licenses.

25. Section 379.364, relating to licenses required for fur and hide dealers.

26.~~16.~~ Section 379.365(2)(b) ~~Section 379.365(2)(a) and (b)~~, prohibiting the ~~possession or use of stone crab traps without~~

~~trap tags and~~ theft of stone crab trap contents or gear, unless otherwise provided in law.

27.~~17.~~ Section 379.366(4)(b), prohibiting the theft of blue crab trap contents or trap gear, unless otherwise provided in that section.

28.~~18.~~ Section 379.3671(2)(c), excluding subparagraph 5., prohibiting the ~~possession or use of spiny lobster traps without trap tags or certificates and~~ theft of spiny lobster trap contents or trap gear, unless otherwise provided in that section.

~~19. Section 379.357, prohibiting the possession of tarpon without purchasing a tarpon tag.~~

14.~~20.~~ Section 379.105, prohibiting the intentional harassment of hunters, fishers, or trappers.

29. Section 379.3751, relating to required licenses for the taking and possession of alligators.

30. Section 379.3752, relating to required tagging of alligators and hides.

(b)1. A person who commits a Level Two violation but who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. Unless the stricter penalties in subparagraph 3. or subparagraph 4. apply, a person who commits a Level Two violation within 3 years after a previous conviction for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $250.

3. Unless the stricter penalties in subparagraph 4. apply,

a person who commits a Level Two violation within 5 years after two previous convictions for a Level Two or higher violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $500 and a suspension of any recreational license or permit issued under s. 379.354 for 1 year. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under any exemption in s. 379.353.

4. A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under s. 379.354 for 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

(3)(a) LEVEL THREE VIOLATIONS.—A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or

animals.

9.~~3.~~ Section 379.407(2), establishing major violations, unless otherwise provided in that section.

10.~~4.~~ Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits, unless otherwise provided in that section.

3.~~5.~~ Section 379.28, prohibiting the importation of freshwater fish.

5.~~6.~~ Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

4.~~7.~~ Section 379.3014, prohibiting the illegal sale or possession of alligators.

6. Section 379.357(4), prohibiting the sale, transfer, or purchase of tarpon.

7.~~8.~~ Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

8.~~9.~~ Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

(b)1. A person who commits a Level Three violation but who has not been convicted of a Level Three or higher violation within the past 10 years commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who commits a Level Three violation within 10 years after a previous conviction for a Level Three or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under s. 379.354 for the remainder of

the period for which the license or permit was issued up to 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

3. A person who commits a violation of s. 379.354(17) shall receive a mandatory fine of $1,000. Any privileges under ss. 379.353 and 379.354 may not be acquired for a 5-year period following the date of the violation.

(4)(a) LEVEL FOUR VIOLATIONS.—A person commits a Level Four violation if he or she violates any of the following provisions:

1. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license, or possession of a recreational license without authorization from the commission.

2. Section 379.365(2)(c), prohibiting criminal activities relating to the taking of stone crabs, unless otherwise provided in that section.

3.~~2.~~ Section 379.366(4)(c), prohibiting criminal activities relating to the taking and harvesting of blue crabs, unless otherwise provided in that section.

4.~~3.~~ Section 379.367(4), prohibiting the willful molestation of spiny lobster gear, unless otherwise specified in that section.

5.~~4.~~ Section 379.3671(2)(c)5., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny

lobster trap tags or certificates, unless otherwise specified in that section.

~~5. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.~~

6. Section 379.404(5), prohibiting the sale of illegally-taken deer or wild turkey.

7. Section 379.405, prohibiting the molestation or theft of freshwater fishing gear.

8. Section 379.409, prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.

9. Section 379.411, prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.

10. Section 379.4115, prohibiting the killing of any Florida or wild panther.

(b) A person who commits a Level Four violation commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(5) ILLEGAL ACTIVITIES WHILE COMMITTING BURGLARY OR TRESPASS.—In addition to any other penalty provided by law, a person who violates the criminal provisions of this chapter or the rules or orders of the commission by illegally killing, taking, possessing, or selling fish and wildlife, in or out of season, while violating chapter 810 shall pay a fine of $500 for each such violation, plus court costs and any restitution ordered by the court. All fines collected under this subsection shall be remitted by the clerk of the court to the Department of

Revenue to be deposited into the State Game Trust Fund of the Fish and Wildlife Conservation Commission.

~~(5) VIOLATIONS OF CHAPTER. Except as provided in this chapter:~~

~~(a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

(6) SUSPENSION OR FORFEITURE OF LICENSE.—The court may order the suspension or forfeiture of any license or permit issued under this chapter to a person who is found guilty of committing a violation of this chapter.

(7) CONVICTION DEFINED.—As used in this section, the term "conviction" means any judicial disposition other than acquittal or dismissal.

Section 21. Section 379.403, Florida Statutes, is repealed.

Section 22. Subsection (1) of section 379.409, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

379.409 Illegal killing, possessing, or capturing of alligators or other crocodilia or eggs; confiscation of equipment.—

(1) It is unlawful to intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or

other crocodilian, unless authorized by the rules of the Fish and Wildlife Conservation Commission. ~~Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, in addition to such other punishment as may be provided by law.~~ Any equipment, including but not limited to weapons, vehicles, boats, and lines, used by a person in the commission of a violation of any law, rule, regulation, or order relating to alligators or other crocodilia or the eggs of alligators or other crocodilia shall, upon conviction of such person, be confiscated by the Fish and Wildlife Conservation Commission and disposed of according to rules, orders, and regulations of the commission. The arresting officer shall promptly make a return of the seizure, describing in detail the property seized and the facts and circumstances under which it was seized, including the names of all persons known to the officer who have an interest in the property.

(4) A person who violates this section commits a Level Four violation under s. 379.401, in addition to such other punishment as may be provided by law.

Section 23. Section 379.411, Florida Statutes, is amended to read:

379.411 Intentional killing or wounding of any species designated as endangered, threatened, or of special concern; criminal penalties.—It is unlawful for a person to intentionally kill or wound any fish or wildlife of a species designated by the Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife, except as

provided for in the rules of the commission. A ~~Any~~ person who violates this section commits a Level Four violation under s. 379.401 ~~this provision with regard to an endangered or threatened species is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

Section 24. Subsection (3) of section 379.4115, Florida Statutes, is amended to read:

379.4115 Florida or wild panther; killing prohibited; penalty.—

(3) A person who violates this section commits a Level Four violation under s. 379.401 ~~convicted of unlawfully killing a Florida panther, or unlawfully killing any member of the species of panther occurring in the wild, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

Section 25. This act shall take effect July 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 Appropriations

BILL:	SB 1282
INTRODUCER:	Senator Dean
SUBJECT:	Fish and Wildlife Conservation Commission
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Favorable**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 1282 revises statutes within chapter 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties. Additionally, the bill:

- Offers violators of recreational hunting, freshwater fishing, and saltwater fishing the option of purchasing the respective license or permit rather than paying the cost of such license or permit without actually receiving it in addition to a civil penalty.
- Defines the term "fish and wildlife" to mean "any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate."
- Expands the scope of the civil penalty for illegally killing, taking, possessing or selling game or fur-bearing animals, while committing burglary or trespassing to include all fish and wildlife.
- Clarifies that spearfishing is authorized by the Fish and Wildlife Conservation Commission rule.
- Authorizes, rather than requires, the commission to retain an administrative fee on donations provided by application to the Southeastern Guide Dogs, Inc.

By changing the penalties and allowing the violator an option to obtain a permit or license to bring the individual into compliance with law, the bill has an estimated negative fiscal impact of $85,456 to the Clerks of the Circuit Court and a positive fiscal impact of $50,806 to the FWC.

II. Present Situation:

The Florida Constitution was amended in 1998 to create the Florida Fish and Wildlife Conservation Commission (FWC).[1] The constitution grants the FWC both the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.[2] The FWC additionally has regulatory and executive powers with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission are required to be prescribed by general law.[3]

Certain regulatory functions from three separate agencies, the Game and Freshwater Fish Commission, the Marine Fisheries Commission, and the Department of Environmental Protection, were combined to create the FWC.[4] Beginning in 2005, FWC staff began reviewing all recreational wildlife, freshwater fishing, and saltwater fishing penalties, with the goal of proposing a four-level penalty structure to the Legislature which would provide consistency.[5] In 2006, the Legislature adopted the recommended structure, which provided four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.[6]

In 2008, ch. 370, F.S., relating to the state's marine fisheries, and ch. 372, F.S, relating to the state's wildlife and freshwater fisheries statutes, were consolidated into ch. 379, F.S.[7] The four-level penalty structure was retained, but revised to bring in the majority of FWC's recreational hunting, freshwater fishing, and saltwater fishing violations into one section. Section 379.401, F.S., provides a listing of penalties and violations by level.[8]

Level One Violations

A person commits a Level One violation if he or she violates any of the following provisions:

- Rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.
- Rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the FWC.
- Rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.
- Rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., providing for recreational licenses to hunt, fish, and trap.

[1] FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 2 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).
[2] Section 9, Art. IV, Fla. Const.
[3] *Id*.
[4] FWC at 3.
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] Section 379.401, F.S.

- Section 379.3581, F.S., providing hunter safety course requirements.
- Section 379.3003, F.S., prohibiting deer hunting unless required clothing is worn.[9]

The penalties for Level One violations are as follows:

Level One violation	Type of Infraction	Civil Penalty
1st offense for failure to possess the required license or permit under s. 379.354, F.S.	Noncriminal[10]	$50 plus the cost of the license or permit[11]
2nd offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1st offense.	Noncriminal[12]	$100 plus the cost of the license or permit[13]
1st offense not involving s. 379.354, F.S., license or permit requirements.	Noncriminal[14]	$50[15]
2nd offense not involving s. 379.354, F.S., license or permit[16] requirements within 36 months of 1st offense.	Noncriminal[17]	$100[18]

Level Two Violations

A person commits a Level Two violation if he or she violates any of the following provisions:

- Rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- Rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- Rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- Rules or orders relating to the feeding of saltwater fish.
- Rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- Rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- Rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- Rules or orders relating to the use of dogs for the taking of wildlife.
- Rules or orders which are not otherwise classified.
- Rules or orders prohibiting the unlawful use of finfish traps.
- All prohibitions of ch. 379, F.S., which are not otherwise classified.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., prohibiting the obstruction of waterways with net gear.

[9] Section 379.401(1)(a), F.S.
[10] Section 379.401(1)(b), F.S.
[11] Section 379.401(1)(c)1., F.S.
[12] Section 379.401(1)(b), F.S.
[13] Section 379.401(1)(c)2., F.S.
[14] Section 379.401(1)(b), F.S.
[15] Section 379.401(1)(d)1., F.S.
[16] Section 379.401(1)(d)2., F.S.
[17] Section 379.401(1)(b), F.S.
[18] Section 379.401(1)(d)2., F.S.

- Section 379.413, F.S., prohibiting the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
- Section 379.366(4)(b), F.S., prohibiting the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
- Section 379.357, F.S., prohibiting the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., prohibiting the intentional harassment of hunters, fishers, or trappers.[19]

The penalties for Level Two violations are as follows:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense	2nd Degree Misdemeanor[20]	Max. $500 or Max. 60 days	None
2nd offense within three years of previous Level Two violation (or higher)	1st Degree Misdemeanor[21]	Min. $250; Max. $1000 or Max. one year	None
3rd offense within five years of two previous Level Two violations (or higher)	1st Degree Misdemeanor[22]	Min. $500; Max. $1000 or Max. one year	Max. suspension of license for one year
4th offense within ten years of three previous Level Two violations (or higher)	1st Degree Misdemeanor[23]	Min. $750; Max. $1000 or Max. one year	Max. suspension of license for three years

Level Three Violations

A person commits a Level Three violation if he or she violates any of the following provisions:

- Rules or orders prohibiting the sale of saltwater fish.
- Rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(2), F.S., establishing major violations.
- Section 379.407(4), F.S, prohibiting the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., prohibiting the importation of freshwater fish.
- Section 379.354(17), F.S., prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., prohibiting the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., prohibiting the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., prohibiting the possession and transportation of commercial quantities of freshwater game fish.[24]

[19] Section 379.401(2)(a), F.S.
[20] Section 379.401(2)(b)1., F.S.
[21] Section 379.401(2)(b)2., F.S.
[22] Section 379.401(2)(b)3., F.S.
[23] Section 379.401(2)(b)4., F.S.
[24] Section 379.401(3)(a), F.S.

The penalties for Level Three violations are as follows:

Level Three violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense	1st Degree Misdemeanor[25]	Max. $1000/ Max. one year	None
2nd offense within ten years of previous Level Three violation (or higher)	1st Degree Misdemeanor[26]	Min. $750; Max. $1000/ Max. one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1st Degree Misdemeanor	Mandatory $1000[27]/ Max. one year	May not acquire license or permit for five years

Level Four Violations

A person commits a Level Four violation if he or she violates any of the following provisions:

- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., prohibiting the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., prohibiting the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.[28]

The penalties for Level Four violations are as follows:

Level Four violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense[29]	3rd Degree Felony	Max. $5000/ Max. five years	None

Section 379.401(4)(b), F.S., only references ss. 775.082 and 775.083, F.S., in relation to the punishment available for third degree felonies. Section 775.084, F.S., relating to enhanced penalties for habitual felony offenders or habitual violent felony offenders, is not included.

Section 379.401(5), F.S., provides an additional "catch-all" provision that makes violations of ch. 379, F.S., except as provided elsewhere, for a first offense, a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days or up to a $500

[25] Section 379.401(3)(b)1., F.S.
[26] Section 379.401(3)(b)2., F.S.
[27] Section 379.401(3)(b)3., F.S.
[28] Section 379.401(4)(a), F.S.
[29] Section 379.401(4)(b), F.S.

fine. For second or subsequent violations, the person commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or up to a $1,000 fine.[30]

Section 379.401(6), F.S., authorizes the court to order the suspension or forfeiture of any license or permit issued under ch. 379, F.S., to a person who is found guilty of committing a violation of the chapter.

In 2014, the FWC staff began to review all fish, wildlife, and recreational penalties to ensure that they were "fair, appropriate, meaningful, and consistent."[31] The FWC staff discovered, that while the revision in 2008 consolidated a majority of the penalties into the four-level structure, there are statutes relating to recreational activities which have penalties outside of the structure.[32] These penalty violations include:

- Section 379.2223, F.S., relating to the control and management of state game lands, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.2257, F.S., relating to cooperative agreements with the U.S. Forest Service.
- Section 379.29, F.S., relating to contaminating fresh waters, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.3511, F.S., relating to the appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.411, F.S., relating to the killing or wounding of any species designated as endangered, threatened, or of special concern, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.
- Section 379.4115, F.S., relating to the Florida or wild panther, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

In addition to statutes that have penalties outside of the four-level structure, there are statutes within ch. 379, F.S., which do not have specified penalties. Section 379.401(2)(a)11 and (5), F.S., both address penalties for prohibitions or violations that are not covered in ch. 379, F.S.

Section 379.401(2)(a)11., F.S., states:

> (2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:
> 11. All prohibitions in this chapter which are not otherwise classified.[33]

Section 379.401(5), F.S., states:

> (5) VIOLATIONS OF CHAPTER.—Except as provided in this chapter:

[30] Section 379.401(5), F.S.
[31] FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 7 (Oct. 23, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[32] *Id*.
[33] Section 379.401(2)(a)11., F.S.

> (a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
> (b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.[34]

III. Effect of Proposed Changes:

This bill revises various statutes within ch. 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties.

Revisions to Clarify Penalties without Changing the Penalty

Level Two Violations

In ch. 379, F.S., there are multiple sections that do not have a specified penalty. Therefore, the penalty defaults to either a Level Two violation pursuant to s. 379.401(2)(a)11., F.S., or to a second or first degree misdemeanor pursuant to s. 379.401(5), F.S. The bill amends the following sections that do not have specified penalties to clarify that the violations of such sections are Level Two violations:

- Section 379.2425, F.S., relating to spearfishing.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting the loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

Level Four Violations

In ch. 379, F.S., there are sections that have penalties for violations specified as third degree felonies. The bill amends the following sections to state that the penalties for the violation of the following statues are Level Four violations, which are punishable as third degree felonies:

- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilian or their eggs.
- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

[34] Section 379.401(5), F.S.

Section 379.354, F.S., relating to Recreational Licenses and Permits

In s. 379.354, F.S., there are only specified violations for subsections (16) and (17). Therefore, violations of the rest of the section should be Level Two violations by default pursuant to s. 379.401(2)(a)11 or second or first degree misdemeanors pursuant to s. 379.401(5). However, there is a cross-reference in s. 379.401, F.S., which lists violations of subsections (1) through (15) of s. 379.354, F.S., as Level One violations. The bill amends s. 379.354, F.S., to clarify that a person who violates such section, unless otherwise provided, commits a Level One violation under s. 379.401, F.S.

Section 379.365, F.S., relating to Stone Crab Regulations

Any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags under current law commits a Level Two violation. Because violations relating to the conservation of marine resources are provided in s. 379.407, F.S., the bill removes the Level Two violation. Therefore, any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags is subject to the following penalties:

- Upon a first conviction; imprisonment for a period of not more than 60 days, a fine of not less than $100 nor more than $500, or both the fine and imprisonment.
- On a second or subsequent conviction within 12 months; imprisonment for not more than six months, a fine of not less than $250 nor more than $1,000, or both the fine and imprisonment.[35]

Increases or Decreases to Penalties

In ch. 379, F.S., there are sections that have penalties for violations specified as second degree misdemeanors. The penalties for second degree misdemeanors are equivalent to Level Two violations, except that the penalties for repeat offenders are increased for Level Two violations. The bill amends the following sections to change the penalties from second degree misdemeanors to Level Two violations:

- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.

Section 379.2223, F.S., provides that the penalty for violating rules necessary for the protection, control, operation, management, or development of lands or waters owned, leased, or otherwise assigned to the FWC for fish and wildlife management purposes is a second degree misdemeanor. The bill amends this section and provides that a person who violates or fails to comply with such rules is subject to penalties as provided in s. 379.401, F.S.

Section 379.2257, F.S., provides that the penalty for violations of rules on areas under a cooperative agreement with the United States Forest Service is a second degree misdemeanor. The bill amends this section to be consistent with the penalties on all other wildlife management areas and provides that a person who violates such rules is subject to penalties as provided in s. 379.401, F.S.

[35] Section 379.407(1), F.S.

The bill amends s. 379.357, F.S., to increase the penalty for the illegal sale of tarpon from a Level Two violation to a Level Three violation. This brings consistency with the penalties for violation of rules or orders prohibiting the sale of saltwater species. Additionally, the bill clarifies that the illegal taking, killing, or possessing of tarpon is a Level Two violation.

Section 379.401, F.S., relating to Penalties and Violations

The bill substantially amends s. 379.401, F.S. to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within with the four-level penalty structure.

Level One Violations

The bill adds the penalties for violating rules or orders relating to the filing of reports and other documents required by persons holding alligator licenses and permits to the list of Level One violations. Also added to the list of Level One violations are the penalties for violating rules or orders requiring the return of unused Convention on International Trade in Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

Under current law, the civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354, F.S., is $50 plus the cost of the license or permit. If the person has previously committed the same Level One violation within the preceding 36 months, the civil penalty is $100 plus the cost of the license or permit. The bill provides an alternative for people who violate the license and permit requirements of s. 379.354, F.S., except violations of subsection (6) relating to pier licenses, subsection (7) relating to vessel licenses, paragraph (8)(f) relating to special use permits for limited entry hunting and fishing activities, or paragraph (8)(h) relating to recreational user permits. A person would be able to purchase the license or permit rather than paying the cost of the license or permit as part of the civil penalty. The bill requires submission of the proof of purchase of the license or permit with the civil penalty. Additionally, the bill increases the civil penalty for any person who has previously committed the same Level One violation within the preceding 36 months from $100 to $250.

Level Two Violations

The bill adds the following references to the list of Level Two violations (these were Level Two violations by default or were revised to Level Two violations):

- Rules or orders requiring the maintenance of records relating to alligators.
- Return of unused CITES tags issued under alligator programs other than the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Section 379.2425, F.S., relating to spearfishing.
- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.

- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

The bill removes ss. 379.33 and 379.407(7), F.S., from the list of Level Two violations. Section 379.33, F.S., was amended to remove the penalty provided in the section because it was an inaccurate statement. This section no longer contains a Level Two violation and, consequently, its cross-reference is removed from the list of penalties. Section 379.407(7), F.S., provides penalties for the unlicensed sale, purchase, or harvest relating to commercial saltwater fishing activities. As s. 379.401, F.S., provides penalties related to recreational activities, the bill removes the cross-reference to s. 379.407(7), F.S., from the section.

The bill amends the following references already on the Level Two list:
- Rules or orders of the commission prohibiting the unlawful use of finfish traps, to reference any traps, unless otherwise provided.
- Section 379.2421, F.S., for consistency.
- Section 379.357, F.S., to clarify that only a violation of subsection (3) of that section, prohibiting the take, kill, or possession of tarpon without purchasing a tarpon tag, is a Level Two violation.
- Section 379.365(2)(a), F.S., to remove the provision prohibiting the possession or use of stone crab traps without trap tags.
- Section 379.3671(2)(c), F.S., to remove the reference prohibiting the possession or use of spiny lobster traps without trap tags or certificates.
- All prohibitions in this chapter which are not otherwise classified, to include all requirements in this chapter which are not otherwise classified.

Level Three Violations

The bill clarifies that not all violations within s. 379.407(2), F.S., are Level Three violations and adds the penalty for violating s. 379.357(4), F.S., which prohibits the sale, transfer, or purchase of tarpon.

Level Four Violations

The bill amends the following references already on the Level Four list to clarify that there are other penalties within those provisions that are not Level Four violations:
- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.

The bill adds the following sections to the list of Level Four violations (these were third degree felonies):

- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

The bill amends the penalty for a Level Four violation to include s. 775.084, F.S., relating to penalties for habitual felony offenders.

Illegal Activities While Committing Burglary or Trespass

The bill repeals s. 379.403, F.S., relating to the taking of game or fur-bearing animals while committing burglary or trespass, and moves the language to s. 379.401, F.S., with the following changes:

- Adds violations pertaining to orders which prohibit the killing, taking, possessing or selling of fish and wildlife.
- Increases the penalty from a $250 fine to a $500 fine.
- Expands the scope from game[36] or fur-bearing animals[37] to all fish and wildlife.

As the term "fish and wildlife" is not defined in ch. 379, F.S., the bill amends s. 379.101, F.S., to define the term "fish and wildlife" to mean "any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate." This definition has the same meaning as in Florida's Endangered and Threatened Species Act.[38]

Violations of the Chapter

The bill removes s. 379.401(5), F.S., which provides an additional catch-all provision. However, s. 379.401(2)(a)13., F.S., retains the catchall that provides that all requirements or prohibitions in ch. 379, F.S., which are not otherwise classified are Level Two violations.

Additional Changes

The bill amends s. 379.2425, F.S., to clarify that spearfishing is authorized under certain circumstances by FWC rule or order.[39]

The bill amends s. 379.33, F.S., to strike language relating to an inaccurate statement that states "except as provided under s. 379.401, F.S., any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1)." This

[36] The term "game" is defined by s. 379.101, F.S., to mean "deer, bear, squirrel, rabbits, and, where designated by commission rules, wild hogs, ducks, geese, rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse, pheasants, quail, and doves."
[37] The term "fur-bearing animals" is defined by s. 379.101, F.S., to mean "muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, and opossum."
[38] Section 379.2291, F.S.
[39] Rule 68B-20.003, F.A.C., authorizes spearfishing if provided in other marine fisheries rules.

statement is inaccurate because violators of FWC rules may also be punished under s. 379.4015, F.S., or ch. 327, F.S., for example.[40]

The bill amends s. 379.3502, F.S., to remove language prohibiting a person from altering or changing in any manner any license or permit issued pursuant to ch. 379, F.S. The section covers illegally loaning or transferring a permit and not altering or changing a permit. Section 379.354(16), F.S., makes forging or counterfeiting permits a Level Four violation.

The bill amends s. 379.357, F.S., to clarify that the purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of FWC rule.

Individuals purchasing a license or permit from the FWC may voluntarily authorize an additional payment of $2 with their application fee to be provided to the Southeastern Guide Dogs, Inc.[41] The bill amends s. 379.359, F.S., to authorize, rather than require, the FWC to retain $0.90 of the fee. This enables the FWC to send the full amount to Southeastern Guide Dogs Inc., minus administrative costs.

The bill amends ss. 379.3004, 379.337, 589.19, and 810.09, F.S., to conform cross-references.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As the penalties for some violations are increased or decreased, SB 1282 may have an indeterminate fiscal impact on individuals who violate ch. 379, F.S.

[40] FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 18 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).
[41] Section 379.359, F.S.

Southeastern Guide Dogs, Inc. may receive an indeterminate positive fiscal impact if applicants for recreational hunting or fishing licenses choose to donate $2 to the charity. Under the bill, the provision requiring FWC to retain $0.90 is removed and, therefore, FWC may provide the charity with the full $2, minus administrative costs.

C. Government Sector Impact:

The FWC estimates the net negative impact to the Clerks of the Circuit Court is $85,456 annually. This represents all the changes to violations if the violators choose the alternative option provided under the bill and purchase a license or permit rather than paying the cost of such license or permit when cited for a violation.[42]

There is an estimated positive fiscal impact on the FWC if violators purchase the recreational licenses or permits. The proceeds from license or permit sales would go into different trust funds depending on the type of license or permit being acquired.[43] The FWC has estimated the bill would increase funds collected by $50,806 annually.[44]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 379.101, 379.2223, 379.2257, 379.2425, 379.29, 379.295, 379.33, 379.3502, 379.3503, 379.3504, 379.3511, 379.354, 379.357, 379.359, 379.363, 379.364, 379.365, 379.3751, 379.3752, 379.401, 379.409, 379.411, 379.4115, 379.3004, 379.337, 589.19, and 810.09.

This bill repeals section 379.403 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.

[42] FWC at 20.
[43] *Id*. at 21.
[44] *Id*.

B. Amendments:

None.

By Senator Dean

5-00724A-16 20161282__

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending s. 379.101, F.S.; defining the term "fish and wildlife"; amending s. 379.2223, F.S.; revising penalties for violations of commission rules relating to control and management of state game lands; amending s. 379.2257, F.S.; revising penalties for violations of commission rules relating to cooperative agreements with the United States Forest Service; amending s. 379.2425, F.S.; authorizing exceptions to the prohibition on spearfishing; specifying penalties for violating the prohibition; amending s. 379.29, F.S.; revising penalties related to the contamination of fresh waters; amending s. 379.295, F.S.; specifying penalties associated with the prohibition on the use of explosives and other substances injurious to fish; amending s. 379.33, F.S.; deleting penalty provisions associated with the general enforcement of commission rules; amending s. 379.3502, F.S.; deleting a provision regarding the alteration of licenses or permits; specifying penalties for the unlawful transfer of a license or permit; amending s. 379.3503, F.S.; specifying penalties for swearing or affirming a false statement in an application for a license or permit; amending s. 379.3504, F.S.; specifying penalties for entering false information on an application for a license or permit; amending s. 379.3511, F.S.; revising penalties for violations related to subagent sales of hunting, fishing, and trapping licenses and permits; amending s. 379.354, F.S.; specifying penalties for violations related to recreational licenses, permits, and

5-00724A-16 20161282__

authorization numbers; amending s. 379.357, F.S.; providing that the purchase of a tarpon tag does not accord the purchaser with certain rights; revising penalties related to the tarpon license program; amending s. 379.359, F.S.; authorizing, rather than requiring, the commission to retain a portion of voluntary contributions for Southeastern Guide Dogs, Inc.; amending s. 379.363, F.S.; specifying penalties for violations related to freshwater fish dealer licenses; amending s. 379.364, F.S.; specifying penalties for violations related to the licensure of fur and hide dealers; amending s. 379.365, F.S.; revising penalties for violations related to stone crabs; amending s. 379.3751, F.S.; specifying penalties for violations related to the taking and possession of alligators; amending s. 379.3752, F.S.; specifying penalties for violations of requirements related to tagging of alligators and alligator hides; amending s. 379.401, F.S.; revising the penalties associated with the violation of commission rules related to the filing of documentation; specifying penalties for the violation of commission rules or orders related to the return of unused Convention on the International Trade on Endangered Species (CITES) tags; authorizing imposition of a modified penalty for a specified offense if certain conditions are met; specifying that persons who commit certain Level One violations may be required to provide proof of a license or permit to satisfy a citation; providing

that violations of commission rules or orders regarding all traps are Level Two violations unless otherwise specified; providing that violations of rules or orders of the commission relating certain alligator-related programs are Level Two violations; providing that certain specified unclassified violations are Level Two violations; revising the levels to which specified violations are assigned; revising penalty provisions for Level Four violations; specifying penalties for certain violations while engaged in trespass; specifying that certain fines collected for trespass violations be deposited in the State Game Trust Fund; repealing s. 379.403, F.S., relating to the illegal killing, taking, possessing, or selling of wildlife or game and related fines; amending s. 379.409, F.S.; revising penalties for the illegal killing, possessing, or capturing of alligators or other crocodilia or crocodilian eggs; amending s. 379.411, F.S.; revising penalties for the unlawful intentional killing or wounding of any species designated as endangered, threatened, or of special concern; amending s. 379.4115, F.S.; revising penalties for the killing of Florida or wild panthers; amending ss. 379.3004, 379.337, 589.19, and 810.09, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (14) through (39) of section 379.101, Florida Statutes, are redesignated as subsections (15) through (40), respectively, and a new subsection (14) is added to that section, to read:

379.101 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(14) "Fish and wildlife" means any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.

Section 2. Subsection (2) of section 379.2223, Florida Statutes, is amended to read:

379.2223 Control and management of state game lands.—

(2) Any person violating or otherwise failing to comply with any rule or regulation so adopted is subject to penalties as provided in s. 379.401 ~~commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 3. Subsection (3) of section 379.2257, Florida Statutes, is amended to read:

379.2257 Cooperative agreements with United States ~~U.S.~~ Forest Service; penalty.—The Fish and Wildlife Conservation Commission is authorized and empowered:

(3) In addition to the requirements of chapter 120, notice of the making, adoption, and promulgation of the above rules and regulations shall be given by posting said notices, or copies of the rules and regulations, in the offices of the county judges and in the post offices within the area to be affected and within 10 miles thereof. In addition to the posting of said

notices, as aforesaid, copies of said notices or of said rules and regulations shall also be published in newspapers published at the county seats of Baker, Columbia, Marion, Lake, Putnam, and Liberty Counties, or so many thereof as have newspapers, once not more than 35 nor less than 28 days and once not more than 21 nor less than 14 days prior to the opening of the state hunting season in said areas. Any person violating any rules or regulations promulgated by the commission to cover these areas under cooperative agreements between the Fish and Wildlife Conservation Commission and the United States Forest Service is subject to penalties as provided in s. 379.401~~, none of which shall be in conflict with the laws of Florida, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 4. Paragraph (a) of subsection (2) of section 379.2425, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

379.2425 Spearfishing; definition; limitations; penalty.—

(2)(a) Except as otherwise provided by commission rule or order, spearfishing is prohibited within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys, which includes all salt waters under the jurisdiction of the Fish and Wildlife Conservation Commission beginning at the county line between Miami-Dade and Monroe Counties and running south, including all of the keys down to and including Long Key.

(4) A person who violates this section commits a Level Two violation under s. 379.401.

Section 5. Subsection (2) of section 379.29, Florida

Statutes, is amended to read:

379.29 Contaminating fresh waters.—

(2) A ~~Any~~ person, firm, or corporation violating ~~any of the provisions of~~ this section commits a Level Two violation under s. 379.401 ~~shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 for the first offense, and for the second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 6. Section 379.295, Florida Statutes, is amended to read:

379.295 Use of explosives and other substances prohibited.—No person may throw or place, or cause to be thrown or placed, any dynamite, lyddite, gunpowder, cannon cracker, acids, filtration discharge, debris from mines, Indian berries, sawdust, green walnuts, walnut leaves, creosote, oil, or other explosives or deleterious substance or force into the fresh waters of this state whereby fish therein are or may be injured. Nothing in this section may be construed as preventing the release of water slightly discolored by mining operations or water escaping from such operations as the result of providential causes. A person who violates this section commits a Level Two violation under s. 379.401.

Section 7. Section 379.33, Florida Statutes, is amended to read:

379.33 Enforcement of commission rules~~; penalties for violation of rule~~.—Rules of the Fish and Wildlife Conservation Commission shall be enforced by any law enforcement officer certified pursuant to s. 943.13. ~~Except as provided under s.~~

~~379.401, any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).~~

Section 8. Section 379.3502, Florida Statutes, is amended to read:

379.3502 License and permit not transferable.—A person may not ~~alter or change in any manner, or~~ loan or transfer to another, unless otherwise provided, any license or permit issued pursuant to ~~the provisions of~~ this chapter, and such license or permit may be used only by ~~nor may any other person, other than~~ the person to whom it is issued. A person who violates this section commits a Level Two violation under s. 379.401~~, use the same~~.

Section 9. Section 379.3503, Florida Statutes, is amended to read:

379.3503 False statement in application for license or permit.—A ~~Any~~ person who swears or affirms to any false statement in any application for license or permit provided by this chapter commits a Level Two violation under s. 379.401, ~~is guilty of violating this chapter, and shall be subject to the penalty provided in s. 379.401,~~ and any false statement contained in any application for such license or permit renders the license or permit void.

Section 10. Section 379.3504, Florida Statutes, is amended to read:

379.3504 Entering false information on licenses or permits.—Whoever knowingly and willfully enters false information on, or allows or causes false information to be entered on or shown upon, any license or permit issued under ~~the~~

~~provisions of~~ this chapter in order to avoid prosecution, or to assist another in avoiding ~~to avoid~~ prosecution, or for any other wrongful purpose commits a Level Two violation under s. 379.401 ~~shall be punished as provided in s. 379.401~~.

Section 11. Paragraphs (d), (e), and (f) of subsection (1) of section 379.3511, Florida Statutes, are amended, and a new subsection (4) is added to that section, to read:

379.3511 Appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits.—

(1) Subagents shall serve at the pleasure of the commission. The commission may establish, by rule, procedures for the selection and appointment of subagents. The following are requirements for subagents so appointed:

~~(d) Any person who willfully violates any of the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(d) ~~(c)~~ A subagent may charge and receive as his or her compensation 50 cents for each license or permit sold. This charge is in addition to the sum required by law to be collected for the sale and issuance of each license or permit. This charge does not apply to the shoreline fishing license; however, for each shoreline fishing license issued, the subagent may retain 50 cents from other license proceeds otherwise due the commission.

(e) ~~(f)~~ A subagent shall submit payment for and report the sale of licenses and permits to the commission as prescribed by the commission.

(4) A person who willfully violates this section commits a Level Two violation under s. 379.401.

Section 12. Subsection (18) is added to section 379.354, Florida Statutes, to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(18) PENALTY.—Unless otherwise provided, a person who violates this section commits a Level One violation under s. 379.401.

Section 13. Subsections (3) through (7) of section 379.357, Florida Statutes, are amended to read:

379.357 Fish and Wildlife Conservation Commission license program for tarpon; fees; penalties.—

(3) An individual may not take, kill, or possess any fish of the species *Megalops atlanticus*, commonly known as tarpon, unless the individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish.

~~(4) Any individual including a taxidermist who possesses a tarpon which does not have a tag securely attached as required by this section commits a Level Two violation under s. 379.401. Provided, however,~~ A taxidermist may remove the tag during the process of mounting a tarpon, but the tag must~~. The removed tag shall~~ remain with the fish during any subsequent storage or shipment. Purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of commission rule. A person who violates this subsection commits a Level Two violation under s. 379.401.

(4)~~(5)~~ An ~~Purchase of a tarpon tag shall not accord the purchaser any right to harvest or possess tarpon in contravention of rules adopted by the commission. No~~ individual may not sell, offer for sale, barter, exchange for merchandise,

transport for sale, either within or without the state, offer to purchase, or purchase any species of fish known as tarpon. A person who violates this subsection commits a Level Three violation under s. 379.401.

(5)~~(6)~~ The commission shall prescribe and provide suitable forms and tags necessary to administer ~~carry out the provisions of~~ this section.

(6)~~(7) The provisions of~~ This section does ~~shall~~ not apply to a person ~~anyone~~ who immediately returns a tarpon, uninjured, to the water at the place where the fish was caught.

Section 14. Section 379.359, Florida Statutes, is amended to read:

379.359 License application provision for voluntary contribution to Southeastern Guide Dogs, Inc.—The application for any license for recreational activities issued under this part must include a check-off provision that permits the applicant for licensure to make a voluntary contribution of $2. The Fish and Wildlife Conservation Commission may ~~shall~~ retain up to 90 cents from each contribution to cover administrative costs. The remainder shall be distributed quarterly by the Fish and Wildlife Conservation Commission to Southeastern Guide Dogs, Inc., located in Palmetto. Southeastern Guide Dogs, Inc., shall use the contributions to breed, raise, and train guide dogs for the blind, specifically for the “Paws for Patriots” program, including in-residence training for veterans who are provided guide dogs by Southeastern Guide Dogs, Inc.

Section 15. Subsection (4) is added to section 379.363, Florida Statutes, to read:

379.363 Freshwater fish dealer’s license.—

(4) A person who violates this section commits a Level Two violation under s. 379.401.

Section 16. Subsection (5) is added to section 379.364, Florida Statutes, to read:

379.364 License required for fur and hide dealers.—

(5) A person who violates this section commits a Level Two violation under s. 379.401.

Section 17. Paragraph (a) of subsection (2) of section 379.365, Florida Statutes, is amended to read:

379.365 Stone crab; regulation.—

(2) PENALTIES.—For purposes of this subsection, conviction is any disposition other than acquittal or dismissal, regardless of whether the violation was adjudicated under any state or federal law.

(a) It is unlawful to violate commission rules regulating stone crab trap certificates and trap tags. A ~~No~~ person may not use an expired tag or a stone crab trap tag not issued by the commission or possess or use a stone crab trap in or on state waters or adjacent federal waters without having a trap tag required by the commission firmly attached to the trap ~~thereto~~.

~~1.~~ In addition to any other penalties provided in s. 379.407, the following administrative penalties apply to a ~~for any~~ commercial harvester who violates this paragraph~~:, the following administrative penalties apply.~~

1.~~a.~~ For a first violation, the commission shall assess an administrative penalty of up to $1,000.

2.~~b.~~ For a second violation that occurs within 24 months of any previous such violation, the commission shall assess an administrative penalty of up to $2,000 and the stone crab

endorsement under which the violation was committed may be suspended for 12 calendar months.

3.~~c.~~ For a third violation that occurs within 36 months of any previous two such violations, the commission shall assess an administrative penalty of up to $5,000 and the stone crab endorsement under which the violation was committed may be suspended for 24 calendar months.

4.~~d.~~ A fourth violation that occurs within 48 months of any three previous such violations~~,~~ shall result in permanent revocation of all of the violator's saltwater fishing privileges, including having the commission proceed against the endorsement holder's saltwater products license in accordance with s. 379.407.

~~2. Any other person who violates the provisions of this paragraph commits a Level Two violation under s. 379.401.~~

Any commercial harvester assessed an administrative penalty under this paragraph shall, within 30 calendar days after notification, pay the administrative penalty to the commission, or request an administrative hearing under ss. 120.569 and 120.57. The proceeds of all administrative penalties collected under this paragraph shall be deposited in the Marine Resources Conservation Trust Fund.

Section 18. Subsection (5) is added to section 379.3751, Florida Statutes, to read:

379.3751 Taking and possession of alligators; trapping licenses; fees.—

(5) A person who violates this section commits a Level Two violation under s. 379.401.

Section 19. Subsection (3) is added to section 379.3752, Florida Statutes, to read:

379.3752 Required tagging of alligators and hides; fees; revenues.—The tags provided in this section shall be required in addition to any license required under s. 379.3751.

(3) A person who violates this section commits a Level Two violation under s. 379.401.

Section 20. Section 379.401, Florida Statutes, is amended to read:

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(1)(a) LEVEL ONE VIOLATIONS.—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold any recreational licenses and permits or any alligator licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

5. Rules or orders of the commission requiring the return of unused Convention on the International Trade on Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

7.~~5.~~ Section 379.354(1)-(15), providing for recreational licenses to hunt, fish, and trap.

8.~~6.~~ Section 379.3581, providing hunter safety course requirements.

6.~~7.~~ Section 379.3003, prohibiting deer hunting unless required clothing is worn.

(b) A person who commits a Level One violation commits a noncriminal infraction and shall be cited to appear before the county court.

(c)1. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is $50 plus the cost of the license or permit, unless subparagraph 2. applies. Alternatively, a person who violates the license and permit requirements of s. 379.354 and who is subject to the penalties imposed by this subparagraph, except a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), may purchase the license or permit and shall provide proof of such license or permit and pay a civil penalty of $50.

2. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is $250 ~~$100~~ plus the cost of the license or permit if the person cited has previously committed the same Level One violation within the preceding 36 months. Alternatively, a person who violates the license and permit requirements of s. 379.354 and who is subject to the penalties imposed by this subparagraph,

except a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), may purchase the license or permit and shall provide proof of such license or permit and pay a civil penalty of $250.

(d)1. The civil penalty for any other Level One violation is $50 unless subparagraph 2. applies.

2. The civil penalty for any other Level One violation is $250 ~~$100~~ if the person cited has previously committed the same Level One violation within the preceding 36 months.

(e) A person cited for a Level One violation shall sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(f) A person cited for a Level One violation may pay the civil penalty, and, if applicable, provide proof of the license or permit required under s. 379.354, by mail or in person, within 30 days after receipt of the citation. If the civil penalty is paid, the person is ~~shall be~~ deemed to have admitted committing the Level One violation and to have waived his or her right to a hearing before the county court. Such admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violation ~~violations~~.

(g) A person who refuses to accept a citation, ~~who fails~~ to pay the civil penalty for a Level One violation, or ~~who fails~~ to appear before a county court as required commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(h) A person who elects to, or is required to, appear

before the county court is ~~or who is required to appear before the county court shall be~~ deemed to have waived the limitations on civil penalties provided under paragraphs (c) and (d). After a hearing, the county court shall determine if a Level One violation has been committed~~;~~ ~~r~~ and, if so, may impose a civil penalty of not less than $50 for a first-time violation, and not more than $500 for subsequent violations. A person found guilty of committing a Level One violation may appeal that finding to the circuit court. The commission of a violation must be proved beyond a reasonable doubt.

(i) A person cited for violating the requirements of s. 379.354 relating to personal possession of a license or permit may not be convicted if, prior to or at the time of a county court hearing, he or she ~~the person~~ produces the required license or permit for verification by the hearing officer or the court clerk. The license or permit must have been valid at the time the person was cited. The clerk or hearing officer may assess a $10 fee for costs under this paragraph.

(2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.

2. Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.

4. Rules or orders of the commission relating to the feeding of saltwater fish.

5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.

6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.

7. Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.

8. Rules or orders of the commission relating to the use of dogs for the taking of wildlife.

9. Rules or orders of the commission which are not otherwise classified.

10. Rules or orders of the commission prohibiting the unlawful use of ~~finfish~~ traps, unless otherwise provided by law.

11. Rules or orders of the commission which require the maintenance of records relating to alligators.

12. Rules or orders of the commission requiring the return of unused CITES tags issued under an alligator management program other than the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program.

13.~~11.~~ All requirements or prohibitions in this chapter which are not otherwise classified.

~~12. Section 379.33, prohibiting the violation of or noncompliance with commission rules.~~

~~13. Section 379.407(7), prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.~~

15.~~14.~~ Section 379.2421, relating to fishers and equipment, unless otherwise provided in that section ~~prohibiting the~~

~~obstruction of waterways with net gear~~.

31.~~15.~~ Section 379.413, prohibiting the unlawful taking of bonefish.

16. Section 379.2425, relating to spearfishing.

17. Section 379.29, prohibiting the contamination of fresh waters.

18. Section 379.295, prohibiting the use of explosives and other substances in fresh waters.

19. Section 379.3502, prohibiting loaning, transferring, or using a borrowed or transferred license or permit.

20. Section 379.3503, prohibiting false statements in an application for a license or permit.

21. Section 379.3504, prohibiting entering false information on licenses or permits.

22. Section 379.3511, relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.

23. Section 379.357(3), prohibiting the take, kill, or possession of tarpon without purchasing a tarpon tag.

24. Section 379.363, relating to freshwater fish dealer's licenses.

25. Section 379.364, relating to licenses required for fur and hide dealers.

26.~~16.~~ Section 379.365(2)(b) ~~Section 379.365(2)(a) and (b)~~, prohibiting the ~~possession or use of stone crab traps without trap tags and~~ theft of stone crab trap contents or gear, unless otherwise provided in law.

27.~~17.~~ Section 379.366(4)(b), prohibiting the theft of blue crab trap contents or trap gear, unless otherwise provided in that section.

28.~~18.~~ Section 379.3671(2)(c), excluding subparagraph 5., prohibiting the ~~possession or use of spiny lobster traps without trap tags or certificates and~~ theft of spiny lobster trap contents or trap gear, unless otherwise provided in that section.

~~19. Section 379.357, prohibiting the possession of tarpon without purchasing a tarpon tag.~~

14.~~20.~~ Section 379.105, prohibiting the intentional harassment of hunters, fishers, or trappers.

29. Section 379.3751, relating to required licenses for the taking and possession of alligators.

30. Section 379.3752, relating to required tagging of alligators and hides.

(b)1. A person who commits a Level Two violation but who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. Unless the stricter penalties in subparagraph 3. or subparagraph 4. apply, a person who commits a Level Two violation within 3 years after a previous conviction for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $250.

3. Unless the stricter penalties in subparagraph 4. apply, a person who commits a Level Two violation within 5 years after two previous convictions for a Level Two or higher violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $500 and a suspension of any recreational license or

permit issued under s. 379.354 for 1 year. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under any exemption in s. 379.353.

4. A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under s. 379.354 for 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

(3)(a) LEVEL THREE VIOLATIONS.—A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or animals.

9.~~3.~~ Section 379.407(2), establishing major violations, unless otherwise provided in that section.

10.~~4.~~ Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits,

unless otherwise provided in that section.

3.~~5.~~ Section 379.28, prohibiting the importation of freshwater fish.

5.~~6.~~ Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

4.~~7.~~ Section 379.3014, prohibiting the illegal sale or possession of alligators.

6. Section 379.357(4), prohibiting the sale, transfer, or purchase of tarpon.

7.~~8.~~ Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

8.~~9.~~ Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

(b)1. A person who commits a Level Three violation but who has not been convicted of a Level Three or higher violation within the past 10 years commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who commits a Level Three violation within 10 years after a previous conviction for a Level Three or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under s. 379.354 for the remainder of the period for which the license or permit was issued up to 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual

license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

3. A person who commits a violation of s. 379.354(17) shall receive a mandatory fine of $1,000. Any privileges under ss. 379.353 and 379.354 may not be acquired for a 5-year period following the date of the violation.

(4)(a) LEVEL FOUR VIOLATIONS.—A person commits a Level Four violation if he or she violates any of the following provisions:

1. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license, or possession of a recreational license without authorization from the commission.

2. Section 379.365(2)(c), prohibiting criminal activities relating to the taking of stone crabs, unless otherwise provided in that section.

3.~~2.~~ Section 379.366(4)(c), prohibiting criminal activities relating to the taking and harvesting of blue crabs, unless otherwise provided in that section.

4.~~3.~~ Section 379.367(4), prohibiting the willful molestation of spiny lobster gear, unless otherwise specified in that section.

5.~~4.~~ Section 379.3671(2)(c)5., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates, unless otherwise specified in that section.

~~5. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.~~

6. Section 379.404(5), prohibiting the sale of illegally-taken deer or wild turkey.

7. Section 379.405, prohibiting the molestation or theft of freshwater fishing gear.

8. Section 379.409, prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.

9. Section 379.411, prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.

10. Section 379.4115, prohibiting the killing of any Florida or wild panther.

(b) A person who commits a Level Four violation commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(5) ILLEGAL ACTIVITIES WHILE COMMITTING BURGLARY OR TRESPASS.—In addition to any other penalty provided by law, a person who violates the criminal provisions of this chapter or the rules or orders of the commission by illegally killing, taking, possessing, or selling fish and wildlife as defined in s. 379.101, in or out of season, while violating chapter 810 shall pay a fine of $500 for each such violation, plus court costs and any restitution ordered by the court. All fines collected under this subsection shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the State Game Trust Fund of the Fish and Wildlife Conservation Commission.

~~(5) VIOLATIONS OF CHAPTER. Except as provided in this chapter:~~

~~(a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

(6) SUSPENSION OR FORFEITURE OF LICENSE.—The court may order the suspension or forfeiture of any license or permit issued under this chapter to a person who is found guilty of committing a violation of this chapter.

(7) CONVICTION DEFINED.—As used in this section, the term "conviction" means any judicial disposition other than acquittal or dismissal.

Section 21. Section 379.403, Florida Statutes, is repealed.

Section 22. Subsection (1) of section 379.409, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

379.409 Illegal killing, possessing, or capturing of alligators or other crocodilia or eggs; confiscation of equipment.—

(1) It is unlawful to intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian, unless authorized by the rules of the Fish and Wildlife Conservation Commission. ~~Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084,~~

~~in addition to such other punishment as may be provided by law.~~ Any equipment, including but not limited to weapons, vehicles, boats, and lines, used by a person in the commission of a violation of any law, rule, regulation, or order relating to alligators or other crocodilia or the eggs of alligators or other crocodilia shall, upon conviction of such person, be confiscated by the Fish and Wildlife Conservation Commission and disposed of according to rules, orders, and regulations of the commission. The arresting officer shall promptly make a return of the seizure, describing in detail the property seized and the facts and circumstances under which it was seized, including the names of all persons known to the officer who have an interest in the property.

(4) A person who violates this section commits a Level Four violation under s. 379.401, in addition to such other punishment as may be provided by law.

Section 23. Section 379.411, Florida Statutes, is amended to read:

379.411 Intentional killing or wounding of any species designated as endangered, threatened, or of special concern; criminal penalties.—It is unlawful for a person to intentionally kill or wound any fish or wildlife of a species designated by the Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife, except as provided for in the rules of the commission. A ~~Any~~ person who violates this section commits a Level Four violation under s. 379.401 ~~this provision with regard to an endangered or threatened species is guilty of a felony of the third degree,~~

~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

Section 24. Subsection (3) of section 379.4115, Florida Statutes, is amended to read:

379.4115 Florida or wild panther; killing prohibited; penalty.—

(3) A person who violates this section commits a Level Four violation under s. 379.401 ~~convicted of unlawfully killing a Florida panther, or unlawfully killing any member of the species of panther occurring in the wild, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

Section 25. Paragraph (a) of subsection (2) of section 379.3004, Florida Statutes, is amended to read:

379.3004 Voluntary Authorized Hunter Identification Program.—

(2) Any person hunting on private land enrolled in the Voluntary Authorized Hunter Identification Program shall have readily available on the land at all times when hunting on the property written authorization from the owner or his or her authorized representative to be on the land for the purpose of hunting. The written authorization shall be presented on demand to any law enforcement officer, the owner, or the authorized agent of the owner.

(a) For purposes of this section, the term "hunting" means to be engaged in or reasonably equipped to engage in the pursuit or taking by any means of any animal described in s. 379.101(20) or (21) ~~s. 379.101(19) or (20)~~, and the term "written authorization" means a card, letter, or other written instrument which shall include, but need not be limited to, the name of the

person or entity owning the property, the name and signature of the person granting the authorization, a description by township, range, section, partial section, or other geographical description of the land to which the authorization applies, and a statement of the time period during which the authorization is valid.

Section 26. Paragraph (d) of subsection (5) of section 379.337, Florida Statutes, is amended to read:

379.337 Confiscation, seizure, and forfeiture of property and products.—

(5) CONFISCATION AND SALE OF PERISHABLE SALTWATER PRODUCTS; PROCEDURE.—

(d) For purposes of confiscation under this subsection, the term "saltwater products" has the meaning specified ~~set out~~ in s. 379.101(37) ~~s. 379.101(36)~~, except that the term does not include saltwater products harvested under the authority of a recreational license unless the amount of such harvested products exceeds three times the applicable recreational bag limit for trout, snook, or redfish.

Section 27. Paragraph (b) of subsection (4) of section 589.19, Florida Statutes, is amended to read:

589.19 Creation of certain state forests; naming of certain state forests; Operation Outdoor Freedom Program.—

(4)

(b) Participation in the Operation Outdoor Freedom Program is ~~shall be~~ limited to Florida residents, as defined in s. 379.101(31)(b) ~~s. 379.101(30)(b)~~, who:

1. Are honorably discharged military veterans certified by the United States Department of Veterans Affairs or its

predecessor or by any branch of the United States Armed Forces to be at least 30 percent permanently service-connected disabled;

2. Have been awarded the Military Order of the Purple Heart; or

3. Are active duty servicemembers with a service-connected injury as determined by his or her branch of the United States Armed Forces.

Proof of eligibility under this subsection, as prescribed by the Florida Forest Service, may be required.

Section 28. Paragraph (h) of subsection (2) of section 810.09, Florida Statutes, is amended to read:

810.09 Trespass on property other than structure or conveyance.—

(2)

(h) Any person who in taking or attempting to take any animal described in s. 379.101(20) or (21) ~~s. 379.101(19) or (20)~~, or in killing, attempting to kill, or endangering any animal described in s. 585.01(13) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does not apply to any governmental agent or employee acting within the scope of his or her official duties.

Section 29. This act shall take effect July 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 Appropriations

BILL:	SB 1312
INTRODUCER:	Senator Dean
SUBJECT:	Protection Zones for Springs
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Favorable**
2.	Betta	DeLoach	AGG	**Recommend: Favorable**
3.	Betta	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 1312 requires the Fish and Wildlife Conservation Commission (FWC) to establish protection zones restricting the speed and operation of vessels to protect and prevent harm to Florida's springs. Any individual who operates a vessel in violation of a spring protection zone may be charged a uniform boating citation. The bill requires the FWC to adopt rules for implementation.

The FWC indicates that the fiscal impact of the bill can be absorbed within its existing budget.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Florida's Springs

Springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.[1] Florida's springs provide a "window" into the Floridan aquifer system, which provides most of the state's drinking water.

Springs form when groundwater is forced out through natural openings in the ground.[2] Florida has more than 700 recognized springs, categorized by flow in cubic feet per second. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day. Spring discharges, primarily from the Floridan aquifer, are used to determine groundwater quality and the degree of human impact on a spring's recharge area. Rainfall,

[1] Department of Community Affairs, *Protecting Florida's Springs: An Implementation Guidebook*, 3-1 (Feb. 2008), *available at* http://www.dep.state.fl.us/springs/reports/files/springsimplementguide.pdf (last visited Jan. 21, 2016).
[2] *Id*. at 3-1 to 3-2.

surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to groundwater chemistry.[3]

Motorboat activity has the potential to harm aquatic ecosystems by causing impacts such as sediment re-suspension and shoreline erosion. Propeller-induced turbulence can cause disturbance of sediments.[4] The amount of resuspension varies with water depth and sediment type, as depth and sediment particle size decrease, resuspension increases.[5] Shoreline erosion refers to the process by which soil particles located along a bank or shore become detached and transported by water currents or wave energy.[6] Boats produce wake, which may in turn create waves that propagate outward until dissipated at the shoreline.[7] Physical impacts due to wake and the consequent wave action are dependent on various factors such as boat size, boating speed, hull design, water depth, and local shoreline characteristics.[8] The impacts of boats on aquatic ecosystems are exhibited in shallow-water near-shore areas; protecting these areas with no wake-zones has been suggested as the most effective way of reducing such impacts.[9]

Regulation of Motorboat Speeds in Florida

Boating Restricted Areas

Section 327.46, F.S., authorizes the Fish and Wildlife Conservation Commission (FWC) to establish restrictions on vessel speeds and vessel traffic on the waters of this state for any purpose necessary to protect the safety of the public, if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards. Boating-restricted areas are adopted by the FWC by rule.[10]

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, the FWC must consult and coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

Local governments are authorized to establish boating-restricted areas by ordinance within certain parameters.[11] Such ordinances must be reviewed by the FWC and determined necessary to protect public safety based upon substantial competent evidence.[12] The following types of restrictions are authorized to be established:

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[3] Florida Geological Survey, *Springs of Florida Bulletin No. 66*, *available at* http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (last visited Oct. 18, 2015).
[4] Richard Klein, Community & Environmental Defense Services, *The Effects of Marinas & Boating Activity upon Tidal Waterways*, pg. 6 (July 2007), *available at* http://www.ceds.org/pdfdocs/Marinas.pdf.
[5] *Id*.
[6] Timothy R. Asplund, Wisconsin Department of Natural Resources, Bureau of Integrated Science Services and University of Wisconsin - Madison, Water Chemistry Program, *The Effects of Motorized Watercraft on Aquatic Ecosystems*, pg. 7 (Mar. 17, 2000), *available at* http://dnr.wi.gov/topic/ShorelandZoning/documents/201301041052.pdf.
[7] *Id*. at 7.
[8] Klein at 9.
[9] Asplund at 18.
[10] Chapter 68D-24, F.A.C., provides the commission established boating restricted areas by county.
[11] Section 327.46(1)(b), F.S.
[12] *Id*.

- An ordinance establishing an idle speed, no wake[13] boating-restricted area, if the area is:
  - Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width.
  - Within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
  - Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width.
  - Within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.
  - Inside or within 300 feet of any lock structure.[14]
- An ordinance establishing a slow speed, minimum wake[15] boating-restricted area if the area is:
  - Within 300 feet of any bridge fender system.
  - Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
  - On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
  - On a lake or pond of less than 10 acres in total surface area.[16]
- An ordinance establishing a vessel-exclusion zone if the area is:
  - Designated as a public bathing beach or swim area.
  - Within 300 feet of a dam, spillway, or flood control structure.[17]

The penalty for operating a vessel in a prohibited manner within a boating-restricted area that has been clearly marked by regulatory markers is a noncriminal infraction, punishable by a civil penalty of $50.[18]

Manatee Protection Zones

Slower boat speeds provide boat operators with more time to see manatees and take avoidance actions. Blunt force injuries that do occur will be less severe, and less likely lethal, when boats are traveling at slower speeds.[19] The Florida Manatee Sanctuary Act requires the FWC to regulate the operation and speed of motorboat traffic where manatee sightings are frequent utilizing the best available scientific information, as well as other available, relevant, and reliable information. This information may include, but is not limited to, manatee surveys, observations, available studies of food sources, water depths, and data that supports the conclusions that

[13] Rule 68D-24.002, F.A.C., defines the term "Idle Speed No Wake" to mean that a vessel cannot proceed at a speed greater than necessary to maintain steerageway.
[14] Section 327.46(1)(b), F.S.
[15] Rule 68D-24.002, F.A.C. defines the term "Slow Speed Minimum Wake" to mean that a vessel must be fully off plane and completely settled in the water and it may not proceed greater than that speed which is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under existing circumstances.
[16] Section 327.46(1)(b), F.S.
[17] *Id*.
[18] Section 327.73, F.S.
[19] C. Scott Calleson & R. Kipp Frohlich, *Slower Boat Speeds Reduce Risks to Manatees*, Vol. 3 ENDANG. SPECIES RES. 295 304, 302 (2007), *available at* http://www.int-res.com/articles/esr2007/3/n003p295.pdf.

manatees inhabit these areas on a regular basis.[20] However, the Legislature made clear that it did not intend to authorize the FWC to post and regulate boat speeds generally throughout the waters of the state, thereby unduly interfering with the rights of fishers, boaters, and water skiers using the areas for recreational and commercial purposes.[21]

Local governments, except in the marked navigation channel of the Florida Intracoastal Waterway and the area within 100 feet of such channel, may regulate (by ordinance) motorboat speed and operation on waters within their jurisdiction that manatees inhabit on a regular basis. The best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, must support the conclusion that manatees inhabit these areas on a regular basis.[22] However, such an ordinance may not take effect until it has been reviewed and approved by the FWC.[23] If local and state regulations are established for the same area, the more restrictive regulation prevails.[24]

The penalty for operating a vessel in excess of a posted speed limit is a noncriminal infraction, punishable by a civil penalty of $50.[25]

Uniform Waterway Markers

The FWC has established a uniform system of regulatory markers compatible with the system of regulatory markers prescribed by the United States Coast Guard in the United States Aids to Navigation System, 33 C.F.R. part 62.[26] The Division of Law Enforcement's Boating Waterways Section, within the FWC, permits and regulates the placement of markers in, on, and over the waters and shores of Florida.[27]

A person or municipality, county, or other governmental entity may not place any uniform waterway marker in, on, or over the waters or shores of the state without a permit.[28] The FWC will not issue any permit authorizing placement of regulatory markers implementing municipal or county ordinances that:

- Are in violation of s. 327.60, F.S., relating to limitations on local regulations;
- Establish boating-restricted areas until such ordinances have been reviewed and approved by the Boating and Waterways Section; or
- Regulate vessel speed or operation for manatee protection purposes, until such ordinances have been reviewed and approved by the FWC, coordinated through the Imperiled Species Management Section, and provided that such ordinances do not apply within the marked

[20] Section 379.2431, F.S.
[21] Section 379.2431(2)(k), F.S.
[22] Section 379.2431(2)(p), F.S.
[23] *Id*.
[24] *Id*.
[25] Section 327.73(1), F.S.
[26] Section 327.41, F.S.
[27] Rule 68D-23.102, F.A.C.
[28] Section 327.40, F.S.

navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel.[29]

III. Effect of Proposed Changes:

The bill creates s. 373.469, F.S., to require the Fish and Wildlife Conservation Commission (FWC) to establish protection zones restricting the speed and operation of vessels to protect and prevent harm to Florida's springs. The bill clarifies that harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic- and wetland-dependent species.

The bill requires the FWC to develop each protection zone in consultation and coordination with the water management district and the governing bodies of the county and municipality, if applicable, in which the zone is located. If the zone includes navigable waters of the United States, the commission shall additionally coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

Any individual who operates a vessel in violation of a spring protection zone shall be charged on a uniform boating citation and is subject to the following penalties:

- First offense is a noncriminal infraction, up to a maximum fine of $50.
- Second offense is a noncriminal infraction, up to a maximum fine of $250.
- Third and subsequent violations are misdemeanors of the second degree, punishable by up to 60 days of imprisonment or up to a $500 fine.

The bill clarifies that any restriction in a spring protection zone does not apply:

- To law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties; or
- In emergency situations, provided the emergency operation of a vessel is a reasonable response given the circumstances.

The bill defines the following terms:

- "Commission" means "the Fish and Wildlife Conservation Commission."
- "Navigable waters of the United States" means "the waters of the United States, including the territorial seas, as referenced in the Clean Water Act, 33 U.S.C. ss. 1251 et seq., and the federal rules and regulations promulgated thereunder."
- "Vessel" has the same meaning as provided in s. 327.02, F.S., which defines the term "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."[30]

The bill provides that the FWC is responsible for the posting and maintenance of regulatory markers identifying the spring protection zones and requires the FWC to adopt rules to establish and implement the spring protection zones.

[29] Rule 68D-23.101, F.A.C.
[30] Section 327.02, F.S.

The bill amends s. 327.73, F.S., to include the penalties for violations relating to protection zones for springs on the list of noncriminal infractions.

The bill amends s. 327.731, F.S., to conform a cross-reference to the list of noncriminal infractions.

The bill takes effect July 1, 2016.

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:

SB 1312 creates fines with the following penalties for any individual who operates a vessel in violation of a spring protection zone and charged on a uniform boating citation:

- First offense is a noncriminal infraction, up to a maximum fine of $50.
- Second offense is a noncriminal infraction, up to a maximum fine of $250.
- Third and subsequent violations are misdemeanors of the second degree, punishable by up to 60 days of imprisonment or up to a $500 fine.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FWC will incur costs associated with rulemaking to develop protection zones and for the posting and maintenance of the regulatory markers for identifying the zones. The FWC estimates that regulatory markers for springs will cost approximately $3,000 per marker. The number of markers are indeterminate at this time. According to the FWC, it is anticipated that these additional costs can be absorbed within existing budget.[31]

[31] Phone conversation on February 11, 2016.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.73, 373.469, and 327.731.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Dean

5-01201A-16 20161312__

A bill to be entitled

An act relating to protection zones for springs; amending s. 327.73, F.S.; providing penalties for violations relating to protection zones for springs; creating s. 373.469, F.S.; defining terms; directing the Fish and Wildlife Conservation Commission to establish protection zones to prevent harm to springs; requiring the commission to set vessel speed and operation standards for protection zones; requiring the commission to consult with certain other entities under certain circumstances; providing penalties; providing exceptions; specifying responsibility for posting and maintaining regulatory markers; requiring the commission to adopt rules; amending s. 327.731, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (1) of section 327.73, Florida Statutes, is amended to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions unless otherwise provided:

(a) Section 373.469, relating to protection zones for springs, for which the penalty is:

1. For a first offense, up to a maximum of $50.

2. For a second offense, up to a maximum of $250.

3. For a third or subsequent offense, criminal penalties as provided in s. 373.469(4).

(b) ~~(a)~~ Section 328.46, relating to operation of

5-01201A-16 20161312__

unregistered and unnumbered vessels.

(c) ~~(b)~~ Section 328.48(4), relating to display of number and possession of registration certificate.

(d) ~~(c)~~ Section 328.48(5), relating to display of decal.

(e) ~~(d)~~ Section 328.52(2), relating to display of number.

(f) ~~(e)~~ Section 328.54, relating to spacing of digits and letters of identification number.

(g) ~~(f)~~ Section 328.60, relating to military personnel and registration of vessels.

(h) ~~(g)~~ Section 328.72(13), relating to operation with an expired registration.

(i) ~~(h)~~ Section 327.33(2), relating to careless operation.

(j) ~~(i)~~ Section 327.37, relating to water skiing, aquaplaning, parasailing, and similar activities.

(k) ~~(j)~~ Section 327.44, relating to interference with navigation.

(l) ~~(k)~~ Violations relating to boating-restricted areas and speed limits:

1. Established by the commission or by local governmental authorities pursuant to s. 327.46.

2. Speed limits established pursuant to s. 379.2431(2).

(m) ~~(l)~~ Section 327.48, relating to regattas and races.

(n) ~~(m)~~ Section 327.50(1) and (2), relating to required safety equipment, lights, and shapes.

(o) ~~(n)~~ Section 327.65, relating to muffling devices.

(p) ~~(o)~~ Section 327.33(3)(b), relating to a violation of navigation rules:

1. That does not result in an accident; or

2. That results in an accident not causing serious bodily

injury or death, for which the penalty is:

a. For a first offense, up to a maximum of $250.

b. For a second offense, up to a maximum of $750.

c. For a third or subsequent offense, up to a maximum of $1,000.

(q) ~~(p)~~ Section 327.39(1), (2), (3), and (5), relating to personal watercraft.

(r) ~~(q)~~ Section 327.53(1), (2), and (3), relating to marine sanitation.

(s) ~~(r)~~ Section 327.53(4), (5), and (7), relating to marine sanitation, for which the civil penalty is $250.

(t) ~~(s)~~ Section 327.395, relating to boater safety education.

(u) ~~(t)~~ Section 327.52(3), relating to operation of overloaded or overpowered vessels.

(v) ~~(u)~~ Section 327.331, relating to divers-down flags and buoys, except for violations meeting the requirements of s. 327.33.

(w) ~~(v)~~ Section 327.391(1), relating to the requirement for an adequate muffler on an airboat.

(x) ~~(w)~~ Section 327.391(3), relating to the display of a flag on an airboat.

(y) ~~(x)~~ Section 253.04(3)(a), relating to carelessly causing seagrass scarring, for which the civil penalty upon conviction is:

1. For a first offense, $50.

2. For a second offense occurring within 12 months after a prior conviction, $250.

3. For a third offense occurring within 36 months after a

prior conviction, $500.

4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, $1,000.

Any person cited for a violation of any provision of this subsection, unless otherwise provided, shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 2. Section 373.469, Florida Statutes, is created to read:

373.469 Protection zones for springs.—

(1) As used in this section, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Navigable waters of the United States" means the waters of the United States, including the territorial seas, as referenced in the Clean Water Act, 33 U.S.C. ss. 1251 et seq., and the federal rules and regulations promulgated thereunder.

(c) "Vessel" has the same meaning as provided in s. 327.02.

(2) The commission shall establish by rule protection zones restricting the speed and operation of vessels to protect and prevent harm to springs. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic- and wetland-dependent species.

(3) The commission shall develop each protection zone in consultation and coordination with the water management district, and the governing bodies of the county and municipality, if applicable, in which the zone is located. If the zone includes navigable waters of the United States, the commission shall additionally coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

(4) Any individual who operates a vessel in violation of a spring protection zone rule adopted pursuant to this section shall be charged on a uniform boating citation as provided in s. 327.74 and is subject to the following penalties:

(a) First and second violations are noncriminal infractions, punishable as provided in s. 327.73(1)(a).

(b) Third and subsequent violations are misdemeanors of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Restrictions in a protection zone do not apply:

(a) To law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties; or

(b) In emergency situations. However, the emergency operation of a vessel must be a reasonable response given the circumstances.

(6) The commission is responsible for the posting and

maintenance of regulatory markers identifying protection zones.

(7) The commission shall adopt rules to implement this section.

Section 3. Subsection (1) of section 327.731, Florida Statutes, is amended to read:

327.731 Mandatory education for violators.—

(1) A person convicted of a criminal violation under this chapter, convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, or convicted of two noncriminal infractions as specified in s. 327.73(1)(i)-(l), (n), (p), (q), and (t)-(y) ~~s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x)~~, said infractions occurring within a 12-month period, must:

(a) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that is approved by and meets the minimum standards established by commission rule;

(b) File with the commission within 90 days proof of successful completion of the course; and

(c) Refrain from operating a vessel until he or she has filed proof of successful completion of the course with the commission.

Section 4. This act shall take effect July 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 Appropriations

BILL:	PCS/SB 1322 (105452)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Latvala
SUBJECT:	Juvenile Detention Costs
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Sadberry	ACJ	**Recommend: Fav/CS**
2.	Clodfelter	Kynoch	AP	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1322 creates a new cost sharing methodology for calculating the shared county and state financial obligations for juvenile detention that reduces the amount that will be paid by counties that are not fiscally constrained (non-fiscally constrained counties) compared to current law. The bill requires non-fiscally constrained counties to pay a total of $42.5 million for detention care costs in Fiscal Year 2016-2017, and requires the state to pay the remaining costs. In subsequent years, the bill requires each non-fiscally constrained county and the state to each pay 50 percent of the total costs of providing detention care in the county. The bill continues current law requiring the state to pay all costs for providing detention care for fiscally constrained counties and juveniles residing out of state.

The bill eliminates "final court disposition" as the demarcation between county and state financial obligations for juvenile detention, replacing it with a cost sharing relationship based on actual costs and county utilization.

The Department of Juvenile Justice (DJJ) indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is $54.3 million. The bill's provision for non-fiscally constrained counties to pay a total of $42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying $11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of $8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate

Bill 2500, the Senate proposed 2016-2017 General Appropriations Bill, to offset the bill's reduction in the counties' payments for Fiscal Year 2016-2017. For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of $6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs.

The bill takes effect upon becoming a law.

II. Present Situation:

The DJJ operates a statewide secure detention system for youth who are charged with committing delinquent acts. The detention care process begins when the DJJ receives custody of a juvenile from a law enforcement agency which has taken the juvenile into custody:

- Upon assuming custody, the DJJ decides whether to place the juvenile in detention care as provided in s. 985.25, F.S., based upon an assessment of risk as provided in s. 985.245, F.S.
- If the DJJ places the juvenile in detention care, a court hearing must be held within 24 hours of the time that the juvenile was taken into custody. At the hearing, the court considers a number of factors to determine whether the juvenile should be kept in continued detention. Section 985.255, F.S., provides these factors, which include current offenses, prior history, legal status, and aggravating or mitigating factors.
- If the court orders the juvenile to be held in secure detention, the detention cannot extend beyond 48 hours unless the court holds another hearing and finds in writing that continued detention is necessary to protect the victim from injury.
- The juvenile may be held in detention until a disposition hearing is held to determine whether the juvenile committed a delinquent act and, if necessary, until the juvenile is sentenced.[1]
- A juvenile who is adjudicated delinquent may be kept in detention for a limited time while awaiting placement in a residential commitment program.[2]

The detention program provides 24-hour care and supervision to juveniles in physically secure facilities, with educational programming provided by individual school districts. The DJJ detention staff transports detained youth to and from court and residential commitment facilities.

Currently, the DJJ operates secure detention facilities in 21 counties with a total of more than 1,300 beds. During Fiscal Year 2014-2015, the DJJ served a total of 15,580 individual youth in secure detention facilities. Marion County, Polk County, and Seminole County operate their own detention centers.

[1] Section 985.26, F.S., provides that pre-hearing detention care is limited to 21 days unless the court has commenced an adjudicatory hearing in good faith. For certain serious offenses, the time may be extended to 30 days before an adjudicatory hearing is commenced. There are also provisions for continued detention beyond these limits to account for continuances granted by the court. In such cases, the court must hold a hearing at the end of every 72 hour period to determine whether continued detention is appropriate and whether further continuance of the hearing is needed.

[2] Sections 985.26 and 985.27, F.S., govern the length of time that a juvenile may be held in detention care after an adjudication of delinquency.

In 2004, the Legislature enacted s. 985.686, F.S., requiring joint financial participation by the state and counties in the provision of juvenile detention. The statute made counties responsible for pre-dispositional detention costs and the DJJ responsible for post-dispositional detention costs, costs for detention care in fiscally constrained counties,[3] and costs for out-of-state youth. Historically, the counties were held responsible for 74 percent of detention costs and the state was responsible for 26 percent. The DJJ's apportionment of costs has been a source of administrative litigation by counties.

In June 2013, the First District Court of Appeal (DCA) affirmed an administrative law judge's order invalidating rules that the DJJ had promulgated in 2010 to clarify the state and the counties' responsibilities. According to the order, the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute. The opinion had the effect of significantly decreasing the counties' fiscal responsibility and increasing the state's financial responsibility.[4]

Administrative petitions have been filed to contest reconciliations for fiscal years since 2008-2009. The DJJ initially entered into stipulations relating to Fiscal Years 2009-2010, 2010-2011, and 2011-2012. These stipulations included all detention after violations of probation as solely in the state's share of costs. However, the DJJ subsequently determined the statute required that counties should pay for the costs of new law violations of probation and the state would pay for the costs of other violations of probation. In May 2014, the DJJ promulgated new rules to implement its understanding of the sharing of costs in accordance with the statute.[5] The Florida Association of Counties and a number of individual counties filed administrative challenges to the new rule.[6] In April 2015, the Division of Administrative Hearings (DOAH) upheld the DJJ's interpretation of "final court disposition" and other significant sections of the proposed rule.[7] The decision is currently on appeal in the First DCA.[8]

In 2014 and 2015, a number of counties ceased to pay, or paid a reduced portion, of their share of the costs of detention costs due to their dispute concerning the DJJ's billing. The Implementing Bill for the Fiscal Year 2015-2016 General Appropriations Act included a requirement for the DJJ to notify the Department of Revenue (DOR) when counties don't pay their share of the costs, and for the DOR to transfer funds from the counties revenue sharing accounts to the DJJ to make up any shortfall.[9] Volusia County has not paid its Fiscal Year 2015-2016 share, and

[3] The term "fiscally constrained county" is currently defined to mean "a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1. Currently, 29 counties are considered fiscally constrained. Prior to 2014, the definition referred to a "rural area of critical economic concern" rather than a "rural area of opportunity," but included the same criteria.

[4] *Dep't of Juvenile Justice v. Okaloosa County*, 113 So.3d 1074 (Fla. 1st DCA 2013).

[5] Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Rules of Administrative Procedure.

[6] The petitioners were: Volusia County (Case No. 14-2799RP); Broward County (Case No. 14-2800RP); Orange County (Case No. 14-4512RP); and the Florida Association Of Counties and Alachua, Bay, Brevard, Charlotte, Collier, Escambia, Flagler, Hernando, Hillsborough, Lake, Lee, Leon, Manatee, Martin, Nassau, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Johns, St. Lucie, and Walton counties (Case No. 14-2801RP). Duval County Jacksonville intervened in all the petitions.

[7] DOAH Final Order in Case Nos. 14-2799RP, 14-2800RP, 14-2801RP and 14-4512RP (April 22, 2015), available at https://www.doah.state.fl.us/ROS/2014/14002799.pdf (last visited February 8, 2016).

[8] Volusia County v. Department of Juvenile Justice, Case No. 1D15-2298 (Fla. 1st District Court of Appeal).

[9] Section 38 of ch. 2015-222, Laws of Florida.

Manatee and Okaloosa counties have made partial payments. These counties have file administrative petition challenging the revenue recovery provision in the DOAH[10], and a number of other counties have filed complaints in circuit court.[11]

III. Effect of Proposed Changes:

Section 1 amends s. 985.686, F.S., relating to shared county and state responsibility for juvenile detention. It adds the term "total shared detention costs" and defines it to mean:

> The amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount is including the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

For Fiscal Year 2016-2017, the bill requires non-fiscally constrained counties to pay a total of $42.5 million, with each county paying its percentage share of detention use. A county's percentage share of that amount is determined by dividing the number of juvenile detention days for juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties during that time period. The bill requires that the DJJ calculate and provide each county with its percentage share by June 1, 2016. Each county is then required to pay its percentage share in 12 equal payments on the first of each month, beginning on July 1, 2016. The state is required to pay the remaining actual costs of detention care.

In Fiscal Year 2015-2016, non-fiscally constrained counties will pay a total of $54.3 million annually. Thus, the bill will reduce the total payment for non-fiscally constrained counties by approximately $11.8 million in Fiscal Year 2016-2017, as compared to what those counties will pay in Fiscal Year 2015-2016.

Beginning in Fiscal Year 2017-2018, the bill will require non-fiscally constrained counties to annually pay a total of 50 percent of total shared detention costs for the prior fiscal year. The bill requires the DJJ to provide each non-fiscally constrained county with its annual percentage share (based upon "the most recently completed 12-month period") of total shared detention costs by June 1, 2017 for Fiscal Year 2017-2018 and each successive fiscal year thereafter. Beginning July 1, non-fiscally constrained counties must make payments in 12 equal installments to the DJJ on the first day of each month of the fiscal year.

The bill continues current law requiring the state to pay the costs of detention in fiscally constrained counties, and codifies current practice by which the state pays detention costs for juveniles who are not residents of Florida. The bill also requires the state to pay all costs of

[10] The administrative petitions are Case No. 15-6458 (Okaloosa County and Manatee County) and Case No. 15-6459 (Volusia County) and are set for hearing on February 19, 2016.

[11] The following counties are plaintiffs in civil complaints that include challenges to the revenue recovery provision: Alachua, Bay, Charlotte, Collier, Hillsborough, Manatee, Marion, Martin, Nassau, Okaloosa, Polk, St. Lucie, and Walton. The cases were all filed in the Circuit Court for the Second Judicial Circuit in and for Leon County and have been consolidated into *Charlotte County, Florida et al. v. Daly*, Case No. 2014 CA 1885 (Fla. 2d Judicial Circuit).

detention care for juveniles housed in state detention centers in counties that provide their own detention care.

Finally, this section of the bill deletes a statutory provision that requires the DOR and the counties to provide technical assistance to the DJJ in order to develop the most cost effective means of collecting payments.

Section 2 amends s. 985.6015(2), F.S., to remove references to predisposition juvenile detention.

Section 3 amends s. 985.688(11), F.S., to remove references to preadjudication detention and preadjudication detention care.

Section 4 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is $54.3 million.

Under PCS/SB 1322, the provision for non-fiscally constrained counties to pay a total of $42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying $11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of $8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate Bill 2500, the Senate

2016-2017 General Appropriations Bill, to be able to offset the bill's reduction in the counties' payments for Fiscal Year 2016-2017.

For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of $6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs. The table below illustrates the current situation and the effect of the bill on cost sharing:

Effect of SB 1332 on Juvenile Detention Cost Sharing								
Fiscal Year	**Estimated Total Costs (non-fiscally constrained counties)**	**State Contribution**	**State Percentage**	**Estimated Increase in State Contribution above Fiscal Year 2015-2016**	**Estimated new GR Needed above SB 2500 Funding**	**County Share**	**County Percentage**	**Difference in County Share as compared to Fiscal Year 2015-2016**
2015-2016	$91.5 mil	$37.2 mil	40.70%	N/A	N/A	$54.3 mil	59.30%	N/A
2016-2017	$91.5 mil	$49.0 mil	53.60%	$11.8 mil	$8.8 mil	$42.5 mil	46.40%	(11.8 mil)
2017-2018	$92.8 mil	$46.4 mil	50.00%	$ 9.2 mil	$6.2 mil	$46.4 mil	50.00%	(7.9 mil)

VI. Technical Deficiencies:

- Consideration should be given to amending lines 32-33 to read: "This amount includes the amount of funds certified forward during that fiscal year, but does not include any funds expended or certified forward for detention care for juveniles residing in fiscally constrained counties."
- On line 48, the word "actual" should be deleted to be consistent with the wording on lines 66-67 pertaining to the state paying the remaining costs of detention care.
- On lines 42 and 57-58, consideration should be given to amending the phrase "the most recently completed 12-month period" to allow sufficient time for the department to obtain detention data and calculate each county's annual share of detention days. For example, if the notice is required by June 1, the phrase could be "the 12-month period that ended on the previous April 30."
- The bill implies that the DJJ will provide each county with the total shared detention costs, but does not specify a due date for doing so. For Fiscal Year 2017-2018 and thereafter, it is impractical for the DJJ to be able to provide each county with the total shared detention costs necessary for the county to pay the first installment of its annual percentage share of total shared detention costs on July 1 of each year. Total shared detention costs are based on costs for the prior fiscal year, which ends on the day before the payments are due. Therefore, consideration should be given to requiring that the DJJ provide the total shared detention costs by July 15 and that each county's first payment be due on August 1 of each year. However, this will require adjustment of the payment schedule for Fiscal Year 2016-2017 so that there is not a gap in the requirement to make a payment each month.
- On line 57, the word "in" included in the phrase "in the most recently" should be replaced by "for" to be consistent with the wording of the phrase on lines 41-42.
- On line 79, the word "in" before the word "counties" should be replaced by "who are from." Generally, a juvenile is detained in the state detention center that serves the county in which he or she is taken into custody. The state detention center may not be in the same county

where the child is taken into custody. It is the juvenile's county of residence, and not the county in which the state detention center is located, that determines whether the state pays all costs of detention care for the juvenile.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.686, Florida Statutes, and makes conforming amendments to sections 985.6015 and 985.688, 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 February 11, 2016:
The committee substitute:

- Provides that non-fiscally constrained counties will pay a proportionate share of total shared detention costs for the prior fiscal year, rather than the prior calendar year.
- Provides that the percentage share of detention days will be based on the most recently completed 12-month period, rather than the prior calendar year.
- Adds conforming amendments to ss. 985.6015 and 985.688, F.S.

B. Amendments:

None.

401798

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 985.686, Florida Statutes, is amended, paragraph (c) is added to subsection (2), subsections (3) through (8) of that section are amended, present subsections (9) and (11) of that section are redesignated as subsections (8) and (10), respectively, and present subsection (10) of that section is amended, to read:

401798

985.686 Shared county and state responsibility for juvenile detention.—

(1)(a) It is the policy of this state that the state and the counties have a joint obligation, as provided in this section, to contribute to the financial support of the detention care provided for juveniles.

(b) The Legislature finds that various counties and the Department of Juvenile Justice have engaged in a multitude of legal proceedings regarding detention cost sharing for juveniles. Such litigation has largely focused on how the Department of Juvenile Justice calculates the detention costs that the counties are responsible for paying. Additionally, litigation pending in 2016 is a financial burden on the taxpayers of this state.

(c) It is the intent of the Legislature that all counties that are not fiscally constrained counties and that have pending administrative or judicial claims or challenges file a notice of voluntary dismissal with prejudice to dismiss all actions pending on or before February 1, 2016, against the state or any state agency related to juvenile detention cost sharing. Furthermore, all counties that are not fiscally constrained shall execute a release and waiver of any existing or future claims and actions arising from detention cost sharing for the 2015-2016 fiscal year. The department may not seek reimbursement from counties complying with this subsection for any underpayment for any cost-sharing requirements before the 2016-2017 fiscal year.

(2) As used in this section, the term:

(c) "Total shared detention costs" means the amount of


401798

funds expended by the department for the costs of detention care for the prior fiscal year. This amount includes the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

(3)(a) For the 2016-2017 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county and that has taken the action fulfilling the intent of this legislation as described in paragraph (1)(c) shall pay its annual percentage share of 50 percent of the total shared detention costs. By July 15, 2016, and each year thereafter, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in the county for the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county must be multiplied by 50 percent of the total shared detention costs to determine that county's share of detention costs. Beginning August 1, each county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care ~~Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and $2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final~~


401798

~~court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties~~.

(b) For the 2016-2017 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county and that has not taken the action fulfilling the intent of this legislation as described in paragraph (1)(c) shall pay its annual percentage share of 57 percent of the total shared detention costs. By July 15, 2016, and each year thereafter, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county must be multiplied by 57 percent of the total shared detention costs to determine that county's share of detention costs. Beginning August 1, each county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care.

(4) ~~Notwithstanding subsection (3),~~ The state shall pay all costs of detention care for juveniles residing in ~~for which~~ a fiscally constrained county and for juveniles residing out of state ~~would otherwise be billed~~. The state shall pay all costs of detention care for juveniles housed in state detention centers from counties that provide their own detention care for juveniles.


401798

~~(a) By October 1, 2004, the department shall develop a methodology for determining the amount of each fiscally constrained county's costs of detention care for juveniles, for the period of time prior to final court disposition, which must be paid by the state. At a minimum, this methodology must consider the difference between the amount appropriated to the department for offsetting the costs associated with the assignment of juvenile pretrial detention expenses to the fiscally constrained county and the total estimated costs to the fiscally constrained county, for the fiscal year, of detention care for juveniles for the period of time prior to final court disposition.~~

~~(b) Subject to legislative appropriation and based on the methodology developed under paragraph (a), the department shall provide funding to offset the costs to fiscally constrained counties of detention care for juveniles for the period of time prior to final court disposition. If county matching funds are required by the department to eliminate the difference calculated under paragraph (a) or the difference between the actual costs of the fiscally constrained counties and the amount appropriated in small county grants for use in mitigating such costs, that match amount must be allocated proportionately among all fiscally constrained counties.~~

(5) Each county that is not a fiscally constrained county shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of the total shared detention costs required by subsection (3) ~~of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use~~


401798

~~of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs shall be reconciled at the end of the state fiscal year~~.

(6) Funds paid by the counties to the department pursuant to this section must be deposited ~~Each county shall pay to the department for deposit~~ into the Shared County/State Juvenile Detention Trust Fund ~~its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties~~.

(7) The department ~~of Juvenile Justice~~ shall determine each quarter whether the counties ~~of this state~~ are remitting funds as required ~~to the department their share of the costs of detention as required~~ by this section. If the department determines that a county is not remitting funds as required, the department shall direct the Department of Revenue to deduct the amount owed to the department from the funds provided to the county under s. 218.23. The Department of Revenue shall transfer the funds withheld to the Shared County/State Juvenile Detention Trust Fund.

~~(8) The Department of Revenue and the counties shall provide technical assistance as necessary to the Department of Juvenile Justice in order to develop the most cost-effective means of collection.~~

(9) ~~(10)~~ This section does not apply to a ~~any~~ county that provides detention care for ~~preadjudicated~~ juveniles or that contracts with another county to provide detention care for ~~preadjudicated~~ juveniles.

401798

Section 2. Subsection (2) of section 985.6015, Florida Statutes, is amended to read:

985.6015 Shared County/State Juvenile Detention Trust Fund.—

(2) The fund is established for use as a depository for funds to be used for ~~the~~ costs of ~~predisposition~~ juvenile detention. Moneys credited to the trust fund shall consist of funds from the counties' share of the costs for ~~predisposition~~ juvenile detention.

Section 3. Paragraph (a) of subsection (11) of section 985.688, Florida Statutes, is amended to read:

986.688 Administering county and municipal delinquency programs and facilities.-

(11)(a) Notwithstanding the provisions of this section, a county is in compliance with this section if:

1. The county provides the full cost for ~~preadjudication~~ detention for juveniles;

2. The county authorizes the county sheriff, any other county jail operator, or a contracted provider located inside or outside the county to provide ~~preadjudication~~ detention care for juveniles;

3. The county sheriff or other county jail operator is accredited by the Florida Corrections Accreditation Commission or American Correctional Association; and

4. The facility is inspected annually and meets the Florida Model Jail Standards.

Section 4. This act shall take effect upon coming law.

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

401798

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act related to juvenile detention costs; amending s. 985.686, F.S.; providing legislative findings; providing legislative intent; defining a term; revising provisions relating to state payments for costs of juveniles residing in fiscally constrained counties; revising provisions relating to the development and use of a methodology for determining each county's share of juvenile detention costs; providing that the state shall pay all costs of detention care for juveniles housed in certain detention centers; providing for calculation of cost sharing of counties that are not fiscally constrained; specifying duties of the Department of Juvenile Justice; amending ss. 985.6015 and 986.688, F.S.; conforming provisions to changes made by the act; providing an effective date.

105452

576-03400-16

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

A bill to be entitled

An act relating to juvenile detention costs; amending s. 985.686, F.S.; defining a term; revising the annual contributions by certain counties for the costs of detention care for juveniles; revising the methodology by which the Department of Juvenile Justice determines the percentage share for each county; requiring the state to pay all costs of detention care for juveniles residing out of state and for juveniles residing in state detention centers in counties that provide their own detention care for juveniles; deleting a requirement that the Department of Revenue and the counties provide certain technical assistance to the Department of Juvenile Justice; revising the applicability of specified provisions; amending ss. 985.6015 and 985.688, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (2) of section 985.686, Florida Statutes, present subsections (9) and (11) of that section are redesignated as subsections (8) and (10), respectively, and subsections (3) through (7) and present subsections (8) and (10) of that section are amended, to read:

985.686 Shared county and state responsibility for juvenile

105452

576-03400-16

detention.—

(2) As used in this section, the term:

(c) "Total shared detention costs" means the amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount is including the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

(3)(a) For the 2016-2017 fiscal year, each county that is not a fiscally constrained county shall pay to the department its annual percentage share of $42.5 million. By June 1, 2016, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county for the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. Beginning July 1, 2016, each county shall pay to the department its annual percentage share of $42.5 million, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care. This paragraph expires June 30, 2017.

(b) For the 2017-2018 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county shall pay its annual percentage share of 50 percent of the total shared detention costs for the prior fiscal year. By June 1, 2017, and each year thereafter, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for

juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county must be multiplied by 50 percent of the total shared detention costs to determine that county's share of detention costs. Beginning July 1, each county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining costs of detention care ~~Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and $2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties.~~

(4) ~~Notwithstanding subsection (3),~~ The state shall pay all costs of detention care for juveniles residing in ~~for which~~ a fiscally constrained county and for juveniles residing out of state. The state shall pay all costs of detention care for juveniles housed in state detention centers in counties that provide their own detention care for juveniles ~~would otherwise be billed~~.

~~(a) By October 1, 2004, the department shall develop a methodology for determining the amount of each fiscally constrained county's costs of detention care for juveniles, for the period of time prior to final court disposition, which must~~

~~be paid by the state. At a minimum, this methodology must consider the difference between the amount appropriated to the department for offsetting the costs associated with the assignment of juvenile pretrial detention expenses to the fiscally constrained county and the total estimated costs to the fiscally constrained county, for the fiscal year, of detention care for juveniles for the period of time prior to final court disposition.~~

~~(b) Subject to legislative appropriation and based on the methodology developed under paragraph (a), the department shall provide funding to offset the costs to fiscally constrained counties of detention care for juveniles for the period of time prior to final court disposition. If county matching funds are required by the department to eliminate the difference calculated under paragraph (a) or the difference between the actual costs of the fiscally constrained counties and the amount appropriated in small county grants for use in mitigating such costs, that match amount must be allocated proportionately among all fiscally constrained counties.~~

(5) Each county that is not a fiscally constrained county shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of 50 percent of the total shared detention costs ~~of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs shall be~~

~~reconciled at the end of the state fiscal year~~.

(6) Funds paid by the counties to the department pursuant to this section must be deposited ~~Each county shall pay to the department for deposit~~ into the Shared County/State Juvenile Detention Trust Fund ~~its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties~~.

(7) The department ~~of Juvenile Justice~~ shall determine each quarter whether the counties ~~of this state~~ are remitting funds as required ~~to the department their share of the costs of detention as required~~ by this section.

~~(8) The Department of Revenue and the counties shall provide technical assistance as necessary to the Department of Juvenile Justice in order to develop the most cost-effective means of collection.~~

(9)~~(10)~~ This section does not apply to a ~~any~~ county that provides detention care for ~~preadjudicated~~ juveniles or that contracts with another county to provide detention care for ~~preadjudicated~~ juveniles.

Section 2. Subsection (2) of section 985.6015, Florida Statutes, is amended to read:

985.6015 Shared County/State Juvenile Detention Trust Fund.—

(2) The fund is established for use as a depository for funds to be used for the costs of ~~predisposition~~ juvenile detention. Moneys credited to the trust fund shall consist of funds from the counties' share of the costs for ~~predisposition~~ juvenile detention.

Section 3. Paragraph (a) of subsection (11) of section

985.688, Florida Statutes, is amended to read:

985.688 Administering county and municipal delinquency programs and facilities.—

(11)(a) Notwithstanding the provisions of this section, a county is in compliance with this section if:

1. The county provides the full cost for ~~preadjudication~~ detention for juveniles;

2. The county authorizes the county sheriff, any other county jail operator, or a contracted provider located inside or outside the county to provide ~~preadjudication~~ detention care for juveniles;

3. The county sheriff or other county jail operator is accredited by the Florida Corrections Accreditation Commission or American Correctional Association; and

4. The facility is inspected annually and meets the Florida Model Jail Standards.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1322
INTRODUCER:	Senator Latvala
SUBJECT:	Juvenile Detention Costs
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Sadberry	ACJ	**Recommend: Fav/CS**
2.	Clodfelter	Kynoch	AP	**Pre-meeting**
3.			RC	

I. Summary:

SB 1322 creates a new cost sharing methodology for calculating the shared county and state financial obligations for juvenile detention that reduces the amount that will be paid by counties that are not fiscally constrained (non-fiscally constrained counties) compared to current law. The bill requires non-fiscally constrained counties to pay a total of $42.5 million for detention care costs in Fiscal Year 2016-2017, and requires the state to pay the remaining costs. In subsequent years, the bill requires each non-fiscally constrained county and the state to each pay 50 percent of the total costs of providing detention care in the county. The bill continues current law requiring the state to pay all costs for providing detention care for fiscally constrained counties and juveniles residing out of state.

The bill eliminates "final court disposition" as the demarcation between county and state financial obligations for juvenile detention, replacing it with a cost sharing relationship based on actual costs and county utilization.

The Department of Juvenile Justice (DJJ) indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is $54.3 million. The bill's provision for non-fiscally constrained counties to pay a total of $42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying $11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of $8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Bill, to offset the bill's reduction in the counties' payments for Fiscal Year 2016-2017. For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of $6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs.

The bill takes effect upon becoming a law.

II. Present Situation:

The DJJ operates a statewide secure detention system for youth who are charged with committing delinquent acts. The detention care process begins when the DJJ receives custody of a juvenile from a law enforcement agency which has taken the juvenile into custody:

- Upon assuming custody, the DJJ decides whether to place the juvenile in detention care as provided in s. 985.25, F.S., based upon an assessment of risk as provided in s. 985.245, F.S.
- If the DJJ places the juvenile in detention care, a court hearing must be held within 24 hours of the time that the juvenile was taken into custody. At the hearing, the court considers a number of factors to determine whether the juvenile should be kept in continued detention. Section 985.255, F.S., provides these factors, which include current offenses, prior history, legal status, and aggravating or mitigating factors.
- If the court orders the juvenile to be held in secure detention, the detention cannot extend beyond 48 hours unless the court holds another hearing and finds in writing that continued detention is necessary to protect the victim from injury.
- The juvenile may be held in detention until a disposition hearing is held to determine whether the juvenile committed a delinquent act and, if necessary, until the juvenile is sentenced.[1]
- A juvenile who is adjudicated delinquent may be kept in detention for a limited time while awaiting placement in a residential commitment program.[2]

The detention program provides 24-hour care and supervision to juveniles in physically secure facilities, with educational programming provided by individual school districts. The DJJ detention staff transports detained youth to and from court and residential commitment facilities.

Currently, the DJJ operates secure detention facilities in 21 counties with a total of more than 1,300 beds. During Fiscal Year 2014-2015, the DJJ served a total of 15,580 individual youth in secure detention facilities. Marion County, Polk County, and Seminole County operate their own detention centers.

In 2004, the Legislature enacted s. 985.686, F.S., requiring joint financial participation by the state and counties in the provision of juvenile detention. The statute made counties responsible for pre-dispositional detention costs and the DJJ responsible for post-dispositional detention costs, costs for detention care in fiscally constrained counties,[3] and costs for out-of-state youth.

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[1] Section 985.26, F.S., provides that pre-hearing detention care is limited to 21 days unless the court has commenced an adjudicatory hearing in good faith. For certain serious offenses, the time may be extended to 30 days before an adjudicatory hearing is commenced. There are also provisions for continued detention beyond these limits to account for continuances granted by the court. In such cases, the court must hold a hearing at the end of every 72 hour period to determine whether continued detention is appropriate and whether further continuance of the hearing is needed.

[2] Sections 985.26 and 985.27, F.S., govern the length of time that a juvenile may be held in detention care after an adjudication of delinquency.

[3] The term "fiscally constrained county" is currently defined to mean "a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1. Currently, 29 counties are considered fiscally constrained. Prior to 2014, the definition referred to a "rural area of critical economic concern" rather than a "rural area of opportunity," but included the same criteria.

Historically, the counties were held responsible for 74 percent of detention costs and the state was responsible for 26 percent. The DJJ's apportionment of costs has been a source of administrative litigation by counties.

In June 2013, the First District Court of Appeal (DCA) affirmed an administrative law judge's order invalidating rules that the DJJ had promulgated in 2010 to clarify the state and the counties' responsibilities. According to the order, the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute. The opinion had the effect of significantly decreasing the counties' fiscal responsibility and increasing the state's financial responsibility.[4]

Administrative petitions have been filed to contest reconciliations for fiscal years since 2008-2009. The DJJ initially entered into stipulations relating to Fiscal Years 2009-2010, 2010-2011, and 2011-2012. These stipulations included all detention after violations of probation as solely in the state's share of costs. However, the DJJ subsequently determined the statute required that counties should pay for the costs of new law violations of probation and the state would pay for the costs of other violations of probation. In May 2014, the DJJ promulgated new rules to implement its understanding of the sharing of costs in accordance with the statute.[5] The Florida Association of Counties and a number of individual counties filed administrative challenges to the new rule.[6] In April 2015, the Division of Administrative Hearings (DOAH) upheld the DJJ's interpretation of "final court disposition" and other significant sections of the proposed rule.[7] The decision is currently on appeal in the First DCA.[8]

In 2014 and 2015, a number of counties ceased to pay, or paid a reduced portion, of their share of the costs of detention costs due to their dispute concerning the DJJ's billing. The Implementing Bill for the Fiscal Year 2015-2016 General Appropriations Act included a requirement for the DJJ to notify the Department of Revenue (DOR) when counties don't pay their share of the costs, and for the DOR to transfer funds from the counties revenue sharing accounts to the DJJ to make up any shortfall.[9] Volusia County has not paid its Fiscal Year 2015-2016 share, and Manatee and Okaloosa counties have made partial payments. These counties have file administrative petition challenging the revenue recovery provision in the DOAH[10], and a number of other counties have filed complaints in circuit court.[11]

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[4] *Dep't of Juvenile Justice v. Okaloosa County*, 113 So.3d 1074 (Fla. 1st DCA 2013).
[5] Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Rules of Administrative Procedure.
[6] The petitioners were: Volusia County (Case No. 14-2799RP); Broward County (Case No. 14-2800RP); Orange County (Case No. 14-4512RP); and the Florida Association Of Counties and Alachua, Bay, Brevard, Charlotte, Collier, Escambia, Flagler, Hernando, Hillsborough, Lake, Lee, Leon, Manatee, Martin, Nassau, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Johns, St. Lucie, and Walton counties (Case No. 14-2801RP). Duval County Jacksonville intervened in all the petitions.
[7] DOAH Final Order in Case Nos. 14-2799RP, 14-2800RP, 14-2801RP and 14-4512RP (April 22, 2015), available at https://www.doah.state.fl.us/ROS/2014/14002799.pdf (last visited February 8, 2016).
[8] Volusia County v. Department of Juvenile Justice, Case No. 1D15-2298 (Fla. 1st District Court of Appeal).
[9] Section 38 of ch. 2015-222, Laws of Florida.
[10] The administrative petitions are Case No. 15-6458 (Okaloosa County and Manatee County) and Case No. 15-6459 (Volusia County) and are set for hearing on February 19, 2016.
[11] The following counties are plaintiffs in civil complaints that include challenges to the revenue recovery provision: Alachua, Bay, Charlotte, Collier, Hillsborough, Manatee, Marion, Martin, Nassau, Okaloosa, Polk, St. Lucie, and Walton. The cases were all filed in the Circuit Court for the Second Judicial Circuit in and for Leon County and have been consolidated into *Charlotte County, Florida et al. v. Daly*, Case No. 2014 CA 1885 (Fla. 2d Judicial Circuit).

III. Effect of Proposed Changes:

Section 1 amends s. 985.686, F.S., relating to shared county and state responsibility for juvenile detention. It adds the term "total shared detention costs" and defines it to mean:

> The amount of funds expended by the department for the costs of detention care in a calendar year, minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state and for postdisposition detention care in those counties that provide their own predisposition detention care for juveniles.

For Fiscal Year 2016-2017, the bill requires non-fiscally constrained counties to pay a total of $42.5 million, with each county paying its percentage share of detention use. A county's percentage share is determined by dividing the number of juvenile detention days for juveniles residing in that county in the prior calendar year by the total number of detention days for juveniles in all non-fiscally constrained counties during the prior calendar year. The bill requires that the DJJ calculate and provide each county with its percentage share by June 1, 2016. Each county is then required to pay its percentage share in 12 equal payments on the first of each month, beginning on July 1, 2016. The state is required to pay the remaining actual costs of detention care.

In Fiscal Year 2015-2016, non-fiscally constrained counties will pay a total of $54.3 million annually. Thus, the bill will reduce the total payment for non-fiscally constrained counties by approximately $11.8 million in Fiscal Year 2016-2017, as compared to what those counties will pay in Fiscal Year 2015-2016.

Beginning in Fiscal Year 2017-2018, the bill will require non-fiscally constrained counties to annually pay a total of 50 percent of total shared detention costs for the prior calendar year. The bill requires the DJJ to provide each non-fiscally constrained county with its annual percentage share of detention costs by February 1, 2017 for Fiscal Year 2017-2018, and by February 1 of each year thereafter for each successive fiscal year. As is required for Fiscal Year 2016-2017, payments to the DJJ must be made in 12 equal installments on the first day of each month of the fiscal year.

The bill continues current law requiring the state to pay the costs of detention in fiscally constrained counties, and codifies current practice by which the state pays detention costs for juveniles who are not residents of Florida. The bill also requires the state to pay all postdisposition costs of detention for juveniles in counties that provide their own predisposition detention care.

Finally, the bill deletes a statutory provision that requires the DOR and the counties to provide technical assistance to the DJJ in order to develop the most cost effective means of collecting payments.

Section 2 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ indicates that the total required payments for non-fiscally constrained counties in Fiscal Year 2015-2016 is $54.3 million. Under SB 1322, the provision for non-fiscally constrained counties to pay a total of $42.5 million in shared detention costs for Fiscal Year 2016-2017 will make the counties responsible for paying $11.8 million less than in Fiscal Year 2015-2016. The DJJ estimates that it will need an appropriation of $8.8 million in general revenue funds above the amount appropriated for juvenile detention care in Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Bill, to be able to offset the bill's reduction in the counties' payments for Fiscal Year 2016-2017. For Fiscal Year 2017-2018, when the total costs for detention care for non-fiscally constrained counties will be split equally between the state and those counties, the DJJ estimates that it will need an appropriation of $6.2 million more in general revenue funds above the amount appropriated for juvenile detention care in SB 2500. The amount for subsequent years should be similar, with adjustments for variances in costs. The table below illustrates the current situation and the effect of the bill on cost sharing:

Effect of SB 1332 on Juvenile Detention Cost Sharing								
Fiscal Year	**Estimated Total Costs (non-fiscally constrained counties)**	**State Contribution**	**State Percentage**	**Estimated Increase in State Contribution above Fiscal Year 2015-2016**	**Estimated new GR Needed above SB 2500 Funding**	**County Share**	**County Percentage**	**Difference from Fiscal Year 2015-2016**
2015-2016	$91.5 mil	$37.2 mil	40.70%	N/A	N/A	$54.3 mil	59.30%	N/A
2016-2017	$91.5 mil	$49.0 mil	53.60%	$11.8 mil	$8.8 mil	$42.5 mil	46.40%	(11.8 mil)
2017-2018	$92.8 mil	$46.4 mil	50.00%	$ 9.2 mil	$6.2 mil	$46.4 mil	50.00%	(7.9 mil)

VI. Technical Deficiencies:

The provision added to s. 985.686(4), F.S. (lines 76-78 of the bill) regarding responsibility for predisposition and postdisposition detention care costs for counties that maintain their own predisposition detention care is not necessary because the bill does not change current law that s. 985.686 does not apply to such counties.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.686 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.

558532

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 985.686, Florida Statutes, is amended, paragraph (c) is added to subsection (2), subsections (3) through (8) of that section are amended, present subsections (9) and (11) of that section are redesignated as subsections (8) and (10), respectively, and present subsection (10) of that section is amended, to read:

558532

985.686 Shared county and state responsibility for juvenile detention.—

(1)(a) It is the policy of this state that the state and the counties have a joint obligation, as provided in this section, to contribute to the financial support of the detention care provided for juveniles.

(b) The Legislature finds that various counties and the Department of Juvenile Justice have engaged in a multitude of legal proceedings regarding detention cost sharing for juveniles. Such litigation has largely focused on how the Department of Juvenile Justice calculates the detention costs that the counties are responsible for paying. Additionally, litigation pending in 2016 is a financial burden on the taxpayers of this state.

(c) It is the intent of the Legislature that all counties that are not fiscally constrained counties and that have pending administrative or judicial claims or challenges file a notice of voluntary dismissal with prejudice to dismiss all actions pending on or before February 1, 2016, against the state or any state agency related to juvenile detention cost sharing. Furthermore, all counties that are not fiscally constrained shall execute a release and waiver of any existing or future claims and actions arising from detention cost sharing for the 2015-2016 fiscal year. The department may not seek reimbursement from counties complying with this subsection for any underpayment for any cost-sharing requirements before the 2016-2017 fiscal year.

(2) As used in this section, the term:

(c) "Total shared detention costs" means the amount of

funds expended by the department for the costs of detention care for the prior fiscal year. This amount includes the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

(3)(a) For the 2016-2017 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county and that has taken the action fulfilling the intent of this legislation as described in paragraph (1)(c) shall pay its annual percentage share of 50 percent of the total shared detention costs. By July 15, 2016, and each year thereafter, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in the county for the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county must be multiplied by 50 percent of the total shared detention costs to determine that county's share of detention costs. Beginning August 1, each county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care ~~Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and $2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final~~

~~court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties~~.

(b) For the 2016-2017 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county and that has not taken the action fulfilling the intent of this legislation as described in paragraph (1)(c) shall pay its annual percentage share of 57 percent of the total shared detention costs. By July 15, 2016, and each year thereafter, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county in the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county must be multiplied by 57 percent of the total shared detention costs to determine that county's share of detention costs. Beginning August 1, each county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care.

(4) ~~Notwithstanding subsection (3),~~ The state shall pay all costs of detention care for juveniles residing in ~~for which~~ a fiscally constrained county and for juveniles residing out of state ~~would otherwise be billed~~. The state shall pay all costs of detention care for juveniles housed in state detention centers from counties that provide their own detention care for juveniles.


558532

~~(a) By October 1, 2004, the department shall develop a methodology for determining the amount of each fiscally constrained county's costs of detention care for juveniles, for the period of time prior to final court disposition, which must be paid by the state. At a minimum, this methodology must consider the difference between the amount appropriated to the department for offsetting the costs associated with the assignment of juvenile pretrial detention expenses to the fiscally constrained county and the total estimated costs to the fiscally constrained county, for the fiscal year, of detention care for juveniles for the period of time prior to final court disposition.~~

~~(b) Subject to legislative appropriation and based on the methodology developed under paragraph (a), the department shall provide funding to offset the costs to fiscally constrained counties of detention care for juveniles for the period of time prior to final court disposition. If county matching funds are required by the department to eliminate the difference calculated under paragraph (a) or the difference between the actual costs of the fiscally constrained counties and the amount appropriated in small county grants for use in mitigating such costs, that match amount must be allocated proportionately among all fiscally constrained counties.~~

(5) Each county that is not a fiscally constrained county shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of the total shared detention costs required by subsection (3) ~~of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use~~

~~of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs shall be reconciled at the end of the state fiscal year~~.

(6) Funds paid by the counties to the department pursuant to this section must be deposited ~~Each county shall pay to the department for deposit~~ into the Shared County/State Juvenile Detention Trust Fund ~~its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties~~.

(7) The department ~~of Juvenile Justice~~ shall determine each quarter whether the counties ~~of this state~~ are remitting funds as required ~~to the department their share of the costs of detention as required~~ by this section. If the department determines that a county is not remitting funds as required, the department shall direct the Department of Revenue to deduct the amount owed to the department from the funds provided to the county under s. 218.23. The Department of Revenue shall transfer the funds withheld to the Shared County/State Juvenile Detention Trust Fund.

~~(8) The Department of Revenue and the counties shall provide technical assistance as necessary to the Department of Juvenile Justice in order to develop the most cost-effective means of collection.~~

(9)~~(10)~~ This section does not apply to a ~~any~~ county that provides detention care for ~~preadjudicated~~ juveniles or that contracts with another county to provide detention care for ~~preadjudicated~~ juveniles.

Section 2. Subsection (2) of section 985.6015, Florida Statutes, is amended to read:

985.6015 Shared County/State Juvenile Detention Trust Fund.—

(2) The fund is established for use as a depository for funds to be used for ~~the~~ costs of ~~predisposition~~ juvenile detention. Moneys credited to the trust fund shall consist of funds from the counties' share of the costs for ~~predisposition~~ juvenile detention.

Section 3. Paragraph (a) of subsection (11) of section 985.688, Florida Statutes, is amended to read:

986.688 Administering county and municipal delinquency programs and facilities.-

(11)(a) Notwithstanding the provisions of this section, a county is in compliance with this section if:

1. The county provides the full cost for ~~preadjudication~~ detention for juveniles;

2. The county authorizes the county sheriff, any other county jail operator, or a contracted provider located inside or outside the county to provide ~~preadjudication~~ detention care for juveniles;

3. The county sheriff or other county jail operator is accredited by the Florida Corrections Accreditation Commission or American Correctional Association; and

4. The facility is inspected annually and meets the Florida Model Jail Standards.

Section 4. This act shall take effect upon coming law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act related to juvenile detention costs; amending s. 985.686, F.S.; providing legislative findings; providing legislative intent; defining a term; revising provisions relating to state payments for costs of juveniles residing in fiscally constrained counties; revising provisions relating to the development and use of a methodology for determining each county's share of juvenile detention costs; providing that the state shall pay all costs of detention care for juveniles housed in certain detention centers; providing for calculation of cost sharing of counties that are not fiscally constrained; specifying duties of the Department of Juvenile Justice; amending ss. 985.6015 and 986.688, F.S.; conforming provisions to changes made by the act; providing an effective date.

By Senator Latvala

20-01641C-16 20161322__

A bill to be entitled

An act relating to juvenile detention costs; amending s. 985.686, F.S.; defining a term; revising the annual contributions by certain counties for the costs of detention care for juveniles; revising the methodology by which the Department of Juvenile Justice determines the percentage share for each county; requiring the state to pay all costs of detention care for juveniles residing out of state and for certain postdisposition detention care; deleting a requirement that the Department of Revenue and the counties provide certain technical assistance to the Department of Juvenile Justice; revising the applicability of specified provisions; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (2) of section 985.686, Florida Statutes, present subsections (9) and (11) of that section are redesignated as subsections (8) and (10), respectively, and subsections (3) through (7) and present subsections (8) and (10) of that section are amended, to read:

985.686 Shared county and state responsibility for juvenile detention.—

(2) As used in this section, the term:

(c) "Total shared detention costs" means the amount of funds expended by the department for the costs of detention care in a calendar year, minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state and for postdisposition detention care in those counties that provide their own predisposition detention care for juveniles.

20-01641C-16 20161322__

(3)(a) For the 2016-2017 fiscal year, each county that is not a fiscally constrained county shall pay to the department its annual percentage share of $42.5 million. By June 1, 2016, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county in the prior calendar year by the total number of detention days for juveniles in all counties that are not fiscally constrained counties in the prior calendar year. Beginning July 1, 2016, each county shall pay to the department its annual percentage share of $42.5 million, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care. This paragraph expires June 30, 2017.

(b) For the 2017-2018 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county shall pay its annual percentage share of 50 percent of the total shared detention costs for the prior calendar year. By February 1, 2017, and each year thereafter, the department shall calculate and provide to each such county its annual percentage share by dividing the total number of detention days for juveniles residing in that county in the prior calendar year by the total number of detention days for juveniles in all counties that are not fiscally constrained counties in the prior calendar year. The annual percentage share of each county that is not a fiscally constrained county must be multiplied by 50 percent of the total shared detention cost for the prior calendar year to determine that county's share of detention costs. Beginning July 1, each county shall pay to the department its share of

detention costs for the prior calendar year, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care ~~Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and $2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties.~~

(4) ~~Notwithstanding subsection (3),~~ The state shall pay all costs of detention care for juveniles residing in ~~for which~~ a fiscally constrained county and for juveniles residing out of state. The state shall pay all costs of postdisposition detention care for those counties that provide their own predisposition detention care for juveniles ~~would otherwise be billed~~.

~~(a) By October 1, 2004, the department shall develop a methodology for determining the amount of each fiscally constrained county's costs of detention care for juveniles, for the period of time prior to final court disposition, which must be paid by the state. At a minimum, this methodology must consider the difference between the amount appropriated to the department for offsetting the costs associated with the assignment of juvenile pretrial detention expenses to the fiscally constrained county and the total estimated costs to the fiscally constrained county, for the fiscal year, of detention care for juveniles for the period of time prior to final court disposition.~~

~~(b) Subject to legislative appropriation and based on the methodology developed under paragraph (a), the department shall provide funding to offset the costs to fiscally constrained counties of detention care for juveniles for the period of time prior to final court disposition. If county matching funds are required by the department to eliminate the difference calculated under paragraph (a) or the difference between the actual costs of the fiscally constrained counties and the amount appropriated in small county grants for use in mitigating such costs, that match amount must be allocated proportionately among all fiscally constrained counties.~~

(5) Each county that is not a fiscally constrained county shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of 50 percent of the total shared detention costs for the prior calendar ~~of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs shall be reconciled at the end of the state fiscal~~ year.

(6) Funds paid by the counties to the department pursuant to this section must be deposited ~~Each county shall pay to the department for deposit~~ into the Shared County/State Juvenile Detention Trust Fund ~~its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties~~.

(7) The department ~~of Juvenile Justice~~ shall determine each quarter whether the counties ~~of this state~~ are remitting funds as required ~~to the department their share of the costs of detention as required~~ by this section.

~~(8) The Department of Revenue and the counties shall provide technical assistance as necessary to the Department of Juvenile Justice in order to develop the most cost-effective means of collection.~~

(9)~~(10)~~ This section does not apply to a ~~any~~ county that provides detention care for preadjudicated juveniles or that contracts with another county to provide predisposition detention care for ~~preadjudicated~~ juveniles.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1370
INTRODUCER:	Health Policy Committee and Senator Grimsley
SUBJECT:	Medicaid Provider Overpayments
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1370 authorizes the Agency for Health Care Administration (AHCA) to certify that a Medicaid provider is "out of business" and that any overpayments made to that provider cannot be collected. Such an authorization allows Florida to use a federal exemption from repayment of the mandatory Medicaid federal share for provider overpayments.

The bill removes obsolete technology references to expand the types of tools available to the AHCA to curb fraud and Medicaid overpayments.

The bill has a potentially positive fiscal impact to the state.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Florida Medicaid Program

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA and financed with federal and state funds. Over 3.9 million Floridians are currently enrolled in Medicaid, and the program's estimated expenditures for the 2015-2016 fiscal year are over $24.9 billion.[1]

Medicaid provider agreements are voluntary contracts between the provider and the AHCA under s. 409.907, F.S., and specifies that a person or entity who enrolls in Medicaid as a provider agrees to comply with all laws, rules, and policies relating to the Medicaid program. Additionally, s. 409.907(4), F.S., specifically states:

> (4) A provider agreement shall provide that, if the provider sells or transfers a business interest or practice that substantially constitutes the entity named as the provider in the provider agreement, or sells or transfers a facility that is of substantial importance to the entity named as the provider in the provider agreement, the provider is required to maintain and make available to the agency Medicaid-related records that relate to the sale or transfer of the business interest, practice, or facility in the same manner as though the sale or transaction had not taken place, unless the provider enters into an agreement with the purchaser of the business interest, practice, or facility to fulfill this requirement.

Office of Medicaid Program Integrity

The Office of Medicaid Program Integrity (MPI), a unit within the Office of the Inspector General at AHCA, audits Medicaid providers and determines if an overpayment has occurred requiring a provider to return funds to the Medicaid program. The AHCA also works jointly with the Medicaid Fraud Control Unit (MFCU) of the Department of Legal Affairs to prevent, reduce, and mitigate health care fraud, waste, and abuse. Because audits are often retrospective in nature and completed on claims data that may be two to five years old, the Medicaid provider may have gone out of business, moved, or may not otherwise be able to be located when the audit has been completed.

The MPI is statutorily required to develop statistical methodologies to identify providers who exhibit aberrant billing patterns.[2] The MPI uses these methods to perform comprehensive audits and analyses of Medicaid providers. Overpayments identified through these audits are referred to the AHCA's Division of Operations, Bureau of Financial Services for collection.[3]

Any suspected criminal violation identified by the AHCA must be referred to the MFCU of the Office of the Attorney General for investigation.[4] The MFCU is responsible for investigating and prosecuting provider fraud within the Medicaid program which commonly involves fraud related to providers billing for services not provided, overcharging for services that are provided, or

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[1] Office of Economic and Demographic Research, *Social Services Estimating Conference* (Jan. 7, 2016) *available at* http://edr.state.fl.us/Content/conferences/medicaid/medltexp.pdf (last visited Feb. 11, 2016).
[2] Section 409.913(2), F.S.
[3] Agency for Health Care Administration and the Department of Legal Affairs, *The State's Efforts to Control Medicaid Fraud and Fraud and Abuse FY 2014-2015*, p. 44 (December 15, 2015) *available at* https://ahca.myflorida.com/Executive/Inspector_General/docs/Medicaid_Fraud_Abuse_Annual_Reports/2014-15_MedicaidFraudandAbuseAnnualReport.pdf (last visited Feb. 5, 2016).
[4] Section 409.913(4), F.S.

billing for services that are medically unnecessary.[5] The AHCA and the MFCU are required to submit an annual joint report to the Legislature documenting the effectiveness of the state's efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments during the previous fiscal year.[6]

When the AHCA discovers an overpayment has been made to a provider that has since gone out of business, a refund from the provider is still pursued, but, historically, less than one percent of such overpayment debts are recovered.[7]

Under federal law, the state is required to refund to federal CMS the federal share of the overpayment no later than one year after the state discovers that an overpayment has been made, regardless of whether the state has collected a refund from the provider.[8]

However, federal law provides that the requirement to refund the federal share to CMS can be waived in cases in which the state is unable to recover the overpayment because the provider has been determined bankrupt or out of business.[9] For an out-of-business provider, in order for the federal refund requirement to be waived, the state must, within one year of discovering the overpayment:

- Document its efforts to locate the provider and its assets; and
- Make available an affidavit or certification from the appropriate state legal authority establishing that the provider is out of business and that the overpayment cannot be collected under state law and procedures.[10]

Currently, the AHCA is not afforded a means under state law and procedures to certify that a Medicaid provider is out of business. Therefore, the provision for the federal refund requirement to be waived cannot be triggered. During Fiscal Year 2012-13, the AHCA was required to refund to CMS approximately $520,000, which represented the federal share of overpayments made to providers that had gone out of business. In Fiscal Year 2011-12, the sum was approximately $2.9 million.[11]

Home Health Care Services Monitoring Project

The Florida Medicaid program has implemented several programs to ensure its recipients do not receive unnecessary and inappropriate medical care and that providers bill for services actually provided. The AHCA manages a number of quality improvement and prior authorization projects to ensure that Medicaid recipients receive medically necessary, quality care in the most cost effective manner.[12] One of the Medicaid services subject to quality improvement or prior authorization is home health services. Sandata Technologies, LLC, currently verifies the

[5] *Supra* note 3, at 1.
[6] *Supra* note 3.
[7] Email from the Agency for Health Care Administration, Sept. 23, 2015, on file with staff of the Senate Appropriations Subcommittee on Health and Human Services.
[8] *See* 42 CFR 433.312(a)(2).
[9] *See* 42 CFR 433.312(b).
[10] *See* 42 CFR.433.318(d).
[11] *Supra*, note 7.
[12] Agency for Health Care Administration, *Utilization Review-Quality Assurance/Quality Improvement*, *http://ahca.myflorida.com/Medicaid/Utilization_Review/index.shtml* (last visited Feb. 9. 2016).

utilization and delivery of home health services through a telephone verification system using a technology called biometrics.[13] The databases contain information on home health agency staff, recipients, service authorizations, visit schedules, visit verifications, and billing activity.[14]

III. Effect of Proposed Changes:

Section 1 amends s. 409.908, F.S., to authorize the AHCA to certify a Medicaid provider as "out of business."

Section 2 amends s. 409.9132, F.S., to remove a reference to telephonic technology for the verification of home health service visits. This section authorizes the AHCA to use technology that is effective for identifying delivery of home health services and deterring fraudulent and abusive billing for the service. Alternate advanced technology may be available at this time.

Section 3 reenacts subsection (4) of s. 409.8132, F.S., relating to the Medikids program for the purposes of incorporating the changes to s. 409.908(25), F.S. This section is included as a cross-reference of Medicaid statutes that are also applicable to the Medikids program.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1370, Florida taxpayers will benefit from the retention of the state's federal share of Medicaid dollars.

[13] Id.
[14] Id.

Private vendors who provide technology that verify the delivery of home health visits may also benefit from the ability of the AHCA to use alternative methods of identifying and deterring fraud and abuse in the Medicaid program.

C. Government Sector Impact:

The AHCA estimates the bill would result in the anticipated average retention of $1 million to $3 million per state fiscal year in federal dollars to the state.[15]

Electronic verification for home health services was mandated to help curb fraud and abuse for these services. With the majority of Medicaid recipients receiving services through managed care plans, electronic visit verification has been reduced from being statewide to operating in eight counties where service utilization remains relatively high.[16] The AHCA will be able to procure a more effective form of an electronic visit verification system upon expiration of its current system with the modification under this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.908 and 409.9132.

This bill reenacts section 409.8132 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on February 9, 2016:
The CS removes obsolete technology language which limits the AHCA's ability to use other technology to identify the delivery of home health services and deter fraudulent or abuse billing practices for these services.

[15] Id at 4.
[16] Agency for Health Care Administration, *Senate Bill 1370 Analysis* (Feb. 3, 2016) (on file with the Senate Committee on Health Policy).

B. Amendments:

None.

By the Committee on Health Policy; and Senator Grimsley

588-03252-16 20161370c1

A bill to be entitled

An act relating to Medicaid provider overpayments; amending s. 409.908, F.S.; authorizing the Agency for Health Care Administration to certify that a Medicaid provider is out of business and that overpayments made to a provider cannot be collected under state law; amending s. 409.9132, F.S.; revising the manner in which the Medicaid program verifies a vendor's visits for the delivery of home health services; reenacting s. 409.8132(4), F.S., to incorporate the amendment made to s. 409.908, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (25) is added to section 409.908, Florida Statutes, to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected

588-03252-16 20161370c1

retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(25) In accordance with 42 C.F.R. s. 433.318(d), the agency may certify that a Medicaid provider is out of business and that any overpayments made to the provider cannot be collected under state law and procedures.

Section 2. Section 409.9132, Florida Statutes, is amended to read:

409.9132 Pilot project to monitor home health services.—The Agency for Health Care Administration shall expand the home health agency monitoring pilot project in Miami-Dade County on a statewide basis effective July 1, 2012, except in counties in which the program is not cost-effective, as determined by the agency. The agency shall contract with a vendor to verify the utilization and delivery of home health services and provide an electronic billing interface for home health services. The contract must require the creation of a program to submit claims electronically for the delivery of home health services. The

program must verify ~~telephonically~~ visits for the delivery of home health services by using technology that is effective for identifying delivery of the home health services and deterring fraudulent or abusive billing for these services ~~voice biometrics~~. The agency may seek amendments to the Medicaid state plan and waivers of federal laws, as necessary, to implement or expand the pilot project. Notwithstanding s. 287.057(3)(e), the agency must award the contract through the competitive solicitation process and may use the current contract to expand the home health agency monitoring pilot project to include additional counties as authorized under this section.

Section 3. Subsection (4) of s. 409.8132, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 409.908, Florida Statutes, in a reference thereto.

Section 4. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 1422 (364684)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Simmons
SUBJECT:	Insurer Regulatory Reporting
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1422 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR).

The bill implements the Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act and the Corporate Governance Annual Disclosure Model Act. The model acts originated from the National Association of Insurance Commissioners' Solvency Modernization Initiative.

Specifically, the bill:

- Provides criteria for the OIR to exempt certain insurers and insurance groups and to provide waivers of ORSA requirements;
- Provides that the ORSA and Corporate Governance filings and related documents are privileged and not subject to subpoena or discovery directly from the OIR;
- Authorizes the OIR to retain third-party consultants to assist in its administration of the bill and specifies requirements for such third-party consultants;
- Authorizes the Financial Services Commission to adopt rules to implement the ORSA and Corporate Governance requirements; and
- Authorizes the OIR to impose sanctions for failure to submit ORSA summary reports or Corporate Governance reports.

There is an insignificant fiscal impact to the OIR that can be handled within existing resources. The bill is effective October 1, 2016, and is contingent upon SB 1416 (Public Record Exemption) becoming law.

II. Present Situation:

State Regulation of Insurance

States are the primary regulators of insurance companies. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR[1] is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,[2] monitoring the financial condition of insurers through examinations and audits, and procedures for the administrative supervision,[3] rehabilitation,[4] or liquidation[5] of an insurance company if it is in unsound financial condition or insolvent.

National Association of Insurance Commissioners Model Acts

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, financial, and organizational standards. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. The OIR is accredited by the NAIC. The last five-year review occurred in 2013.

In response to the 2008 financial crisis, the NAIC launched the Solvency Modernization Initiative to review existing solvency oversight tools and early warning mechanisms and identify areas of potential improvement. Two of the model acts emanating from this initiative are the ORSA Model Act and the Corporate Governance Annual Disclosure Model Act.

The ORSA Model Act

The ORSA Model Act requires insurers to conduct their own internal assessment of all reasonably foreseeable and relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. This information will provide regulators

[1] Section 20.121(3)(a), F.S.
[2] Sections 624.411 - 624.414, F.S.
[3] Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company's troubles rather than close it down.
[4] In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.
[5] In liquidation, the DFS is authorized as receiver to gather the insurance company's assets, convert them to cash, distribute them to various claimants, and shut down the company.

with a more comprehensive view of the ability of an insurer to withstand financial stress. According to the ORSA Model Act and ORSA Guidance Manual, the ORSA has two primary goals: "to foster an effective level of Enterprise Risk Management…;" and "provide a group-level perspective on risk and capital, as a supplement to the existing legal entity view."[6]

The ORSA Model Act requires insurers (or an insurance group, as applicable) to:

- Maintain a risk management framework for identifying assessing, monitoring, managing and reporting on its material and relevant risks;
- Conduct an ORSA at least annually; and
- File an ORSA summary report based on the ORSA Guidance Manual with their domestic regulator or lead state (for an insurance group) beginning in 2017.

The ORSA Model Act and ORSA Guidance Manual give the insurer and insurance group flexibility with respect to the form and content of the ORSA summary report, recognizing that each insurer and insurance group's business, strategic planning, and approach to enterprise risk management is unique. The ORSA summary reports are filed with the lead state regulator of the insurance group. Depending on the group, the OIR may or may not be the lead state regulator.

Insurers with direct premium below $500 million and an insurance group of which the insurer is a member with premium below $1 billion are exempt from the requirements of the ORSA Model Act. However, based on "unique circumstances," the OIR may require an exempt insurer to file an ORSA summary report. The OIR may waive the filing requirement for non-exempt insurers.

The ORSA Model Act is an NAIC accreditation standard effective January 1, 2018. Thirty-four[7] jurisdictions have adopted a substantially similar version of the ORSA Model Act. Florida has not yet adopted it in any form.

Corporate Governance Model Act

During full-scope, onsite financial examinations, the OIR obtains some information on insurer governance structures, processes and practices. However, these examinations are typically limited to domestic insurers and occur only once every five years.[8] During the interval between these examinations, the OIR's access to insurer governance practices is more limited. This can mask changes and activities having a substantial bearing on the financial condition of the insurer.

The Corporate Governance Model Act is designed to provide insurance regulators with sufficient information on insurer governance structures, practices, and processes through an annual disclosure. The Corporate Governance Model Act does not mandate any particular standards or procedures beyond those already provided under state law. The NAIC simultaneously adopted a Corporate Governance Model Regulation that delineates the contents of the annual disclosure.

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[6] National Association of Insurance Commissioners, Own Risk and Solvency Assessment (ORSA) Brief, http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 23, 2016).

[7] Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with Banking and Insurance Committee).

[8] Section 624.316 (2)(a), F.S., provides that the OIR may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 5 years.

Insurers or insurer groups must file a Corporate Governance Annual Disclosure with their domestic regulator or the lead state regulator (for an insurance group) no later than June 1 of each year beginning in 2017. The key items in the Corporate Governance disclosure include:

- The insurer's corporate governance framework and structure including duties and structure of the Board of Directors and its committees;
- The policies and practices of its Board of Directors and significant committees including appointment practices, the frequency of meetings held and review procedures;
- The policies and practices directing Senior Management including a description of defined suitability standards, the insurer's code of conduct and ethics, performance evaluation and compensation practices, and succession planning; and
- The processes by which the Board of Directors, its committees and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's business activities including risk management processes, the actuarial function, and investment, reinsurance and business strategy decision-making processes.

The Corporate Governance Model Act is expected to become an NAIC accreditation standard.[9] According to the NAIC, five states[10] have adopted a version of the Corporate Governance Model Act in a substantially similar form. Florida has not adopted it.

III. Effect of Proposed Changes:

Section 1 creates s. 628.8015, F.S., which requires insurers or insurance groups (if applicable), to file an ORSA and Corporate Governance information with their domestic regulator or lead state, beginning in 2017.

Definitions

In addition to defining "corporate governance annual disclosure," "ORSA," "ORSA guidance manual," and "ORSA summary report," the bill defines the following:

- "Insurer" is defined to have the same meaning as in s. 624.03, F.S.,[11] but excludes state and federal agencies, authorities, instrumentalities, possessions, territories, or political subdivisions of a state.
- "Insurance group" is defined to mean insurers and affiliates included within an insurance holding company system.
- "Senior management" is defined to mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators. This includes, but is not limited to, a number of executives such as chief executive officer, chief financial officer, and chief risk officer.

[9] According to the NAIC, "The F Committee currently has out for a one year exposure the 2014 revisions to Models #305 and #306 for inclusion to the Accreditation Part A standards. The exposure period for this will end 12/31/2016. The F Committee will discuss this again at the 2017 Spring National Meeting and likely expose it for 30 days after – then consider adoption at the 2017 Summer National Meeting...if the Committee votes to adopt them into the Part A standards, the earliest it could be required for accreditation would be 1/1/19. There is a possibility the timeline could change." NAIC correspondence (Jan. 19, 2016) (on file with Senate Committee on Banking and Insurance).

[10] California, Indiana, Iowa, Louisiana, and Vermont have adopted the model act. Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with Banking and Insurance Committee).

[11] Section 624.03, F.S., defines "insurer" to mean every person engaged as an indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

ORSA Provisions

The bill incorporates the three major components of the ORSA, to require insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
  - This requirement may be satisfied by being a member of an insurance group with a risk management framework applicable to the insurer's operations;
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group), consistent with and comparable to the process in the ORSA Guidance Manual;[12]
- File an ORSA summary report, based on the ORSA Guidance Manual, with their domestic regulator or lead state (for an insurance group), beginning in 2017, which must:
  - Be submitted once every calendar year;
  - Include notification to the OIR of its proposed annual submission date by December 1, 2016; the initial ORSA summary report must be submitted by December 31, 2017;
  - Include a brief description of material changes and updates from the prior year's report;
  - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide copy to board of directors or appropriate board committee; and
  - Be prepared in accordance with the ORSA guidance manual and insurer must maintain and make available for OIR examination documentation and supporting information.

ORSA Exemption & Waiver

The bill exempts an insurer from the ORSA requirement if:

- Its annual direct written and unaffiliated assumed premium is less than $500 million (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program), or
- It is a member of an insurance group with an annual direct written and unaffiliated assumed premium of $1 billion or less (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program).[13]

The bill also creates reporting obligations, contingent on the exempt status of the insurer and its insurance group. The OIR may still require an exempt insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report based on certain circumstances, such as risk-based capital that triggers a company-action-level event,[14] the

[12] The bill defines "ORSA guidance manual" as the ORSA manual developed and adopted by the NAIC. *See* NAIC, *ORSA Guidance Manual* (Jul. 2014), at http://www.naic.org/store/free/ORSA_manual.pdf.

[13] According to the OIR, two property and casualty insurer groups and five life and health insurer groups meet the ORSA threshold and have Florida as the lead state. OIR, *Q&A on ORSA and CGAD* (Nov. 15, 2015), on file with the Banking and Insurance Committee.

[14] Section 624.81(11), F.S., authorizes the OIR to place an insurer under administrative supervision and order corrective action if the insurer is in unsound condition, exceeds its powers granted under its certificate of authority, or its practices are hazardous to the public. Commission rule defines "hazardous financial condition" in accordance with NAIC model regulation. Rule 69O-141.002, F.A.C.

exhibition of qualities of an insurer in hazardous financial condition, or if submission of the report is in the best interests of the state. In addition, the bill allows OIR to grant a waiver to an otherwise non-exempt insurer based on unique circumstances, and specifies criteria for the OIR to consider.

Corporate Governance

The bill requires insurers or insurer members of insurance groups (of which the OIR is the lead state regulator) to submit a Corporate Governance Annual Disclosure every June 1, with an initial disclosure to be submitted by December 31, 2018. The chief executive officer or corporate officer must sign the disclosure, and must describe the insurer or insurance group's governance framework and structure, relevant policies and practices, and processes for overseeing critical risk areas affecting business activities.

The bill specifies that the OIR may require the submission of the annual disclosure prior to December 31, 2018:

- Based on unique circumstances including type and volume of business written, ownership and structure, and federal and international requests.
- If the insurer meets one of the standards of an insurer deemed to be in a hazardous financial condition or exhibits qualities of an insurer in hazardous financial condition.
- If the insurer is a member of an insurance group where the OIR is the lead state regulator.
- If the OIR determines that is in the best interest of the state.

The bill allows insurers and insurance groups to provide corporate governance information at the ultimate controlling parent level, the intermediate holding company level, or at the individual legal entity level. Additionally, insurers and insurance groups may make their Corporate Governance Annual Disclosure at levels at which the insurer or insurance group 1) determines risk appetite, 2) oversees or exercises coordinated supervision of earnings, capital, liquidity, operations, and reputation of the insurer, or 3) at which legal liability would be placed for failure of general corporate governance duties. The insurer or insurance group must indicate their level of reporting and explain any subsequent changes, and may meet these requirements by referring other relevant and existing documents, such as the ORSA summary report, Holding Company B or F filings, and Securities and Exchange Commission proxy statements.

Insurers and insurance groups must report subsequent changes to the Corporate Governance Annual Disclosure. The lead state may request additional information and must review the Corporate Governance Annual Disclosure in accordance with the NAIC Financial Handbook. The insurer or insurance group must maintain and make available upon examination or request by the OIR any documentation and supporting information relating to the disclosure.

Privilege & Confidentiality of ORSA and Corporate Governance

The bill provides that the ORSA and Corporate Governance filings and related documents that are submitted pursuant to this new provision, s. 628.8015, F.S., are privileged and not subject to subpoena or discovery directly from the OIR. The bill prohibits the OIR, or any person acting under the OIR's authority (such as third-party consultants), from testifying as to such filings or related documents in a private civil action. However, the OIR or the Department of Financial

Services may use these filings and related documents in any regulatory or legal action it brings against an insurer as part of their official duties. The bill also provides that any applicable claims of privilege as to these filings and related documents are not waived simply because a disclosure to the OIR under this section or under any other provision of the Insurance Code. In 2014, substantially similar privilege language was enacted[15] for other insurer regulatory filings, regarding insurance holding company registration statements and annual enterprise risk reports[16] and annual actuarial opinions of reserves and supporting memoranda required of life insurers.[17]

Third-Party Consultants

The bill authorizes the OIR to retain third-party consultants at the expense of the insurer or the insurance group for assisting the OIR with ORSA and Corporate Governance Annual Disclosure responsibilities. The bill requires these third-party consultants to adhere to confidentiality and conflict of interest standards through a written agreement with the OIR. In other areas of the Insurance Code, the OIR has authority to contract with independent external auditors or examiners under the following provisions.[18]

Rulemaking

The bill authorizes the Financial Services Commission to adopt rules to administer the provisions of s. 628.8015, F.S.

Sanctions

Currently, s. 628.803, F.S., authorizes the OIR to impose sanctions on insurers and certain affiliated individuals of insurers for certain violations. The 2014 insurer solvency legislation authorizes the OIR to place an insurer under an order of supervision and to disapprove dividends or distributions, if the OIR finds that the insurer violated s. 628.461, F.S., (acquisition of controlling stock requirements) or s. 628.801, F.S., (insurance holding company registration statement and enterprise risk reporting requirements).[19]

Section 2 amends s. 628.803, F.S., to provide that the OIR may impose these fines for failure to submit an ORSA summary report or Corporate Governance Annual Disclosure, or may issue an order of supervision and disapprove dividends or distributions if an insurance company violates s. 628.8015, F.S., which is created by this bill. The OIR may impose a penalty of $100 per day for failure to file a report, not to exceed $10,000.

Section 3 provides the act is repealed on October 2, 2021, unless the Legislature reauthorizes the public records exemption provided in SB 1416 or similar legislation.

[15] ch. 2014-101, ss. 8 and 11, Laws of Fla.
[16] Section 628.801(4), F.S.
[17] Section 625.1214, F.S.
[18] Section 624.316(2)(e), F.S., the OIR general examination authority; s. 624.3161(3), F.S., the OIR market conduct examination authority; s. 624.44(1)(c), F.S., multiple-employer welfare arrangements; and s. 641.27(2), F.S., health maintenance organization examinations.
[19] Section 628.803(4), F.S.; ch. 2014-101, s. 12, Laws of Fla.

Section 4 provides the act will take effect October 1, 2016, if SB 1416 or similar 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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 1422, insurers may incur additional administrative costs associated with preparing and submitting the ORSA report and the Corporate Governance Annual Disclosure. However, under the provisions of the Corporate Governance Annual Disclosure, insurers and insurance groups are permitted to reference existing documents and filings. For purposes of ORSA filings, insurers are required to file the ORSA Summary reports with the lead state regulator of the insurance group, thereby avoiding regulatory redundancies associated with reporting in each state.

C. Government Sector Impact:

According to the OIR, implementation of the bill is expected to have an insignificant impact on technology systems. The OIR can accommodate the collection of any additional information through their current system.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[20] Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with the Senate Committee on Banking and Insurance.)

VIII. Statutes Affected:

This bill substantially amends section 628.803 of the Florida Statutes.

This bill creates section 628.8015 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 General Government on February 11, 2016:
The committee substitute:

- Changes the date insurers must submit the annual disclosure to December 31, 2018, from December 31, 2017.
- Provides that the OIR may request the annual disclosure prior to December 31, 2018, under certain circumstances.
- Provides a contingency for repeal if the public records exemption in SB 1416 or similar legislation is not reenacted prior to expiration on October 2, 2021.

CS by Banking and Insurance on January 26, 2016:
The CS authorizes the Financial Services Commission to adopt rules; however, the adoption of such rules would be subject to the rule ratification provisions of s. 120.541(3), F.S. The CS also provides technical, conforming changes.

B. Amendments:

None.

576-03421-16

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

A bill to be entitled

An act relating to insurer regulatory reporting; creating s. 628.8015, F.S.; defining terms; requiring an insurer to maintain a risk management framework; requiring certain insurers and insurance groups to conduct an own-risk and solvency assessment; providing requirements for the preparation and submission of an own-risk and solvency assessment summary report; providing exemptions and waivers; requiring certain insurers and members of an insurance group to prepare and submit a corporate governance annual disclosure; requiring the initial corporate governance annual disclosure to be submitted to the Office of Insurance Regulation by a specified date; authorizing the office to require an insurer or insurance group to provide a corporate governance annual disclosure before such date under certain circumstances; specifying requirements for preparing and annually filing the corporate governance annual disclosure; specifying privilege requirements and prohibitions for certain filings and related documents; authorizing the Office of Insurance Regulation to retain third-party consultants for certain purposes; authorizing the Financial Services Commission to adopt rules; amending s. 628.803, F.S.; revising provisions relating to penalties to conform to the act; providing for contingent repeal of the act; providing a contingent

576-03421-16

effective date.

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

Section 1. Section 628.8015, Florida Statutes, is created to read:

628.8015 Own-risk and solvency assessment; corporate governance annual disclosure.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Corporate governance annual disclosure" means a report filed by an insurer or insurance group in accordance with this section.

(b) "Insurance group" means insurers and affiliates included within an insurance holding company system.

(c) "Insurer" has the same meaning as in s. 624.03. However, the term does not include agencies, authorities, instrumentalities, possessions, or territories of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; or agencies, authorities, instrumentalities, or political subdivisions of a state.

(d) "Own-risk and solvency assessment" or "ORSA" means an internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the business plan of an insurer or insurance group and the sufficiency of capital resources to support those risks.

(e) "ORSA guidance manual" means the own-risk and solvency assessment guidance manual developed and adopted by the National

Association of Insurance Commissioners.

(f) "ORSA summary report" means a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.

(g) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators and includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief risk officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other executive performing one or more of these functions.

(2) OWN-RISK AND SOLVENCY ASSESSMENT.—

(a) *Risk management framework.*—An insurer shall maintain a risk management framework to assist in identifying, assessing, monitoring, managing, and reporting its material and relevant risks. An insurer may satisfy this requirement by being a member of an insurance group with a risk management framework applicable to the operations of the insurer.

(b) *ORSA requirement.*—Subject to paragraph (c), an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with and comparable to the process in the ORSA guidance manual. The ORSA must be conducted at least annually and whenever there have been significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

(c) *ORSA summary report.*—

1.a. A domestic insurer or insurer member of an insurance

group of which the office is the lead state, as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook, shall:

(I) Submit an ORSA summary report to the office once every calendar year.

(II) Notify the office of its proposed annual submission date by December 1, 2016. The initial ORSA summary report must be submitted by December 31, 2017.

b. An insurer not required to submit an ORSA summary report pursuant to sub-subparagraph a. shall:

(I) Submit an ORSA summary report at the request of the office, but not more than once per calendar year.

(II) Notify the office of the proposed submission date within 30 days after the request of the office.

2. An insurer may comply with sub-subparagraph 1.a. or sub-subparagraph 1.b. by providing the most recent and substantially similar ORSA summary report submitted by the insurer, or another member of an insurance group of which the insurer is a member, to the chief insurance regulatory official of another state or the supervisor or regulator of a foreign jurisdiction. For purposes of this subparagraph, a "substantially similar" ORSA summary report is one that contains information comparable to the information described in the ORSA guidance manual as determined by the commissioner of the office. If the report is in a language other than English, it must be accompanied by an English translation.

3. The chief risk officer or chief executive officer of the insurer or insurance group responsible for overseeing the enterprise risk management process must sign the ORSA summary

report attesting that, to the best of his or her knowledge and belief, the insurer or insurance group applied the enterprise risk management process described in the ORSA summary report and provided a copy of the report to the board of directors or the appropriate board committee.

4. The ORSA summary report must be prepared in accordance with the ORSA guidance manual. Documentation and supporting information must be maintained by the insurer and made available upon examination pursuant to s. 624.316 or upon the request of the office.

5. The ORSA summary report must include a brief description of material changes and updates since the prior year report.

6. The office's review of the ORSA summary report must be conducted, and any additional requests for information must be made, using procedures similar to those used in the analysis and examination of multistate or global insurers and insurance groups.

(d) *Exemption.*—

1. An insurer is exempt from the requirements of this subsection if:

a. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than $500 million; or

b. The insurer is a member of an insurance group and the insurance group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop

Insurance Corporation and the National Flood Insurance Program, of less than $1 billion.

2. If an insurer is:

a. Exempt under sub-subparagraph 1.a., but the insurance group of which the insurer is a member is not exempt under sub-subparagraph 1.b., the ORSA summary report must include every insurer within the insurance group. The insurer may satisfy this requirement by submitting more than one ORSA summary report for any combination of insurers if any combination of reports includes every insurer within the insurance group.

b. Not exempt under sub-subparagraph 1.a., but the insurance group of which it is a member is exempt under sub-subparagraph 1.b., the insurer must submit to the office the ORSA summary report applicable only to that insurer.

3. The office may require an exempt insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report:

a. Based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;

b. If the insurer has risk-based capital for a company action level event pursuant to s. 624.4085(3), meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in rules adopted by the commission pursuant to s. 624.81(11), or exhibits qualities of an insurer in hazardous financial condition as determined by the office; or

c. If the office determines it is in the best interest of

the state.

4. If an exempt insurer becomes disqualified for an exemption because of changes in premium as reported on the most recent annual statement of the insurer or annual statements of the insurers within the insurance group of which the insurer is a member, the insurer must comply with the requirements of this section effective 1 year after the year in which the insurer exceeded the premium thresholds.

(e) *Waiver.*—An insurer that does not qualify for an exemption under paragraph (d) may request a waiver from the office based upon unique circumstances. If the insurer is part of an insurance group with insurers domiciled in more than one state, the office must coordinate with the lead state and with the other domiciliary regulators in deciding whether to grant a waiver. In deciding whether to grant a waiver, the office may consider:

1. The type and volume of business written by the insurer.

2. The ownership and organizational structure of the insurer.

3. Any other factor the office considers relevant to the insurer or insurance group of which the insurer is a member.

A waiver granted pursuant to this paragraph is valid until withdrawn by the office.

(3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

(a) *Scope.*—This section does not prescribe or impose corporate governance standards and internal procedures beyond those required under applicable state corporate law or limit the authority of the office, or the rights or obligations of third

parties, under s. 624.316.

(b) *Disclosure requirement.*—

1.a. An insurer, or insurer member of an insurance group, of which the office is the lead state regulator, as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook, shall submit a corporate governance annual disclosure to the office by June 1 of each calendar year. The initial corporate governance annual disclosure must be submitted by December 31, 2018.

b. An insurer or insurance group not required to submit a corporate governance annual disclosure under sub-subparagraph a. shall do so at the request of the office, but not more than once per calendar year. The insurer or insurance group shall notify the office of the proposed submission date within 30 days after the request of the office.

c. Before December 31, 2018, the office may require an insurer or insurance group to provide a corporate governance annual disclosure:

(I) Based on unique circumstances, including, but not limited to, the type and volume of business written, the ownership and organizational structure, federal agency requests, and international supervisor requests;

(II) If the insurer has risk-based capital for a company action level event pursuant to s. 624.4085(3), meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in rules adopted pursuant to s. 624.81(11), or exhibits qualities of an insurer in hazardous financial condition as determined by the office;

(III) If the insurer is the member of an insurer group of

which the office acts as the lead state regulator as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook; or

(IV) If the office determines that it is in the best interest of the state.

2. The chief executive officer or corporate secretary of the insurer or the insurance group must sign the corporate governance annual disclosure attesting that, to the best of his or her knowledge and belief, the insurer has implemented the corporate governance practices and provided a copy of the disclosure to the board of directors or the appropriate board committee.

3.a. Depending on the structure of its system of corporate governance, the insurer or insurance group may provide corporate governance information at one of the following levels:

(I) The ultimate controlling parent level;

(II) An intermediate holding company level; or

(III) The individual legal entity level.

b. The insurer or insurance group may make the corporate governance annual disclosure at:

(I) The level used to determine the risk appetite of the insurer or insurance group;

(II) The level at which the earnings, capital, liquidity, operations, and reputation of the insurer are collectively overseen and the supervision of those factors is coordinated and exercised; or

(III) The level at which legal liability for failure of general corporate governance duties would be placed.

An insurer or insurance group must indicate the level of reporting used and explain any subsequent changes in the reporting level.

4. The review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook.

5. An insurer or insurance group may comply with this paragraph by cross-referencing other existing relevant and applicable documents, including, but not limited to, the ORSA summary report, Holding Company Form B or F filings, Securities and Exchange Commission proxy statements, or foreign regulatory reporting requirements, if the documents contain information substantially similar to the information described in paragraph (c). The insurer or insurance group shall clearly identify and reference the specific location of the relevant and applicable information within the corporate governance annual disclosure and attach the referenced document if it has not already been filed with, or made available to, the office.

6. Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating changes that have been made. If changes have not been made in the previously filed disclosure, the insurer or insurance group should so indicate.

(c) *Preparation of the corporate governance annual disclosure.*—

1. The corporate governance annual disclosure must be

prepared in a manner consistent with this subsection. Documentation and supporting information must be maintained and made available upon examination pursuant to s. 624.316 or upon the request of the office.

2. The corporate governance annual disclosure must be as descriptive as possible and include any attachments or example documents used in the governance process.

3. The insurer or insurance group has discretion in determining the appropriate format of the corporate governance annual disclosure in communicating the required information and responding to inquiries, provided that the corporate governance annual disclosure includes material and relevant information sufficient to enable the office to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.

4. The corporate governance annual disclosure must describe the:

a. Corporate governance framework and structure of the insurer or insurance group.

b. Policies and practices of the most senior governing entity and significant committees.

c. Policies and practices for directing senior management.

d. Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas that have an impact on the insurer's business activities.

(4) CONFIDENTIALITY.—The filings and related documents submitted pursuant to subsections (2) and (3) are privileged and not subject to subpoena or discovery directly from the office.

However, the department or office may use these filings and related documents in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office. A waiver of any applicable claim of privilege in these filings and related documents may not occur because of a disclosure to the office under this section, because of any other provision of the Insurance Code, or because of sharing under s. 624.4212. The office or a person receiving these filings and related documents, while acting under the authority of the office, or with whom such filings and related documents are shared pursuant to s. 624.4212, is not permitted or required to testify in any private civil action concerning any such filings or related documents.

(5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain third-party consultants at the expense of the insurer or insurance group for the purpose of assisting it in the performance of its regulatory responsibilities under this section, including, but not limited to, the risk management framework, the ORSA, the ORSA summary report, and the corporate governance annual disclosure. A third-party consultant must agree, in writing, to:

(a) Adhere to confidentiality standards and requirements applicable to the office governing the sharing and use of such filings and related documents.

(b) Verify to the office, with notice to the insurer, that the consultant is free of any conflict of interest.

(c) Monitor compliance with applicable confidentiality and conflict of interest standards pursuant to a system of internal procedures.

(6) RULE ADOPTION.—The commission may adopt rules to administer this section.

Section 2. Subsections (1) and (4) of section 628.803, Florida Statutes, are amended to read:

628.803 Sanctions.—

(1) Any company failing, without just cause, to file any registration statement or certificate of exemption required to be filed pursuant to commission rules relating to this part or to submit an ORSA summary report or a corporate governance annual disclosure required pursuant to s. 628.8015 shall, in addition to other penalties prescribed under the Florida Insurance Code, be subject to pay a penalty of $100 for each day's delay, not to exceed a total of $10,000.

(4) If the office determines that any person violated s. 628.461, ~~or~~ s. 628.801, or s. 628.8015, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part VI of chapter 624.

Section 3. Section 628.8015, Florida Statutes, and the amendments made by this act to s. 628.803, Florida Statutes, are repealed on October 2, 2021, unless, before that date, the Legislature saves from repeal through reenactment the amendments to s. 624.4212, Florida Statutes, made by SB 1416 or similar legislation.

Section 4. This act shall take effect October 1, 2016, if SB 1416 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1422
INTRODUCER:	Banking and Insurance Committee and Senator Simmons
SUBJECT:	Insurer Regulatory Reporting
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1422 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR).

The bill implements the Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act and the Corporate Governance Annual Disclosure Model Act. The model acts originated from the National Association of Insurance Commissioners' Solvency Modernization Initiative.

Specifically, the bill:

- Provides criteria for the OIR to exempt certain insurers and insurance groups and to provide waivers of ORSA requirements;
- Provides that the ORSA and Corporate Governance filings and related documents are privileged and not subject to subpoena or discovery directly from the OIR;
- Authorizes the OIR to retain third-party consultants to assist in its administration of the bill and specifies requirements for such third-party consultants;
- Authorizes the Financial Services Commission to adopt rules to implement the ORSA and Corporate Governance requirements; and
- Authorizes the OIR to impose sanctions for failure to submit ORSA summary reports or Corporate Governance reports.

There is an insignificant fiscal impact to the OIR that can be handled within existing resources.

The bill is effective October 1, 2016, and is contingent upon SB 1416 (Public Record Exemption) becoming law.

II. Present Situation:

State Regulation of Insurance

States are the primary regulators of insurance companies. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR[1] is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,[2] monitoring the financial condition of insurers through examinations and audits, and procedures for the administrative supervision,[3] rehabilitation,[4] or liquidation[5] of an insurance company if it is in unsound financial condition or insolvent.

National Association of Insurance Commissioners Model Acts

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, financial, and organizational standards. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. The OIR is accredited by the NAIC. The last five-year review occurred in 2013.

In response to the 2008 financial crisis, the NAIC launched the Solvency Modernization Initiative to review existing solvency oversight tools and early warning mechanisms and identify areas of potential improvement. Two of the model acts emanating from this initiative are the ORSA Model Act and the Corporate Governance Annual Disclosure Model Act.

The ORSA Model Act

The ORSA Model Act requires insurers to conduct their own internal assessment of all reasonably foreseeable and relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. This information will provide regulators with a more comprehensive view of the ability of an insurer to withstand financial stress.

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[1] Section 20.121(3)(a), F.S.
[2] Sections 624.411 - 624.414, F.S.
[3] Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company's troubles rather than close it down.
[4] In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.
[5] In liquidation, the DFS is authorized as receiver to gather the insurance company's assets, convert them to cash, distribute them to various claimants, and shut down the company.

According to the ORSA Model Act and ORSA Guidance Manual, the ORSA has two primary goals: "to foster an effective level of Enterprise Risk Management…;" and "provide a group-level perspective on risk and capital, as a supplement to the existing legal entity view."[6]

The ORSA Model Act requires insurers (or an insurance group, as applicable) to:

- Maintain a risk management framework for identifying assessing, monitoring, managing and reporting on its material and relevant risks;
- Conduct an ORSA at least annually; and
- File an ORSA summary report based on the ORSA Guidance Manual with their domestic regulator or lead state (for an insurance group) beginning in 2017.

The ORSA Model Act and ORSA Guidance Manual give the insurer and insurance group flexibility with respect to the form and content of the ORSA summary report, recognizing that each insurer and insurance group's business, strategic planning, and approach to enterprise risk management is unique. The ORSA summary reports are filed with the lead state regulator of the insurance group. Depending on the group, the OIR may or may not be the lead state regulator.

Insurers with direct premium below $500 million and an insurance group of which the insurer is a member with premium below $1 billion are exempt from the requirements of the ORSA Model Act. However, based on "unique circumstances," the OIR may require an exempt insurer to file an ORSA summary report. The OIR may waive the filing requirement for non-exempt insurers.

The ORSA Model Act is an NAIC accreditation standard effective January 1, 2018. Thirty-four[7] jurisdictions have adopted a substantially similar version of the ORSA Model Act. Florida has not yet adopted it in any form.

Corporate Governance Model Act

During full-scope, onsite financial examinations, the OIR obtains some information on insurer governance structures, processes and practices. However, these examinations are typically limited to domestic insurers and occur only once every five years.[8] During the interval between these examinations, the OIR's access to insurer governance practices is more limited. This can mask changes and activities having a substantial bearing on the financial condition of the insurer.

The Corporate Governance Model Act is designed to provide insurance regulators with sufficient information on insurer governance structures, practices, and processes through an annual disclosure. The Corporate Governance Model Act does not mandate any particular standards or procedures beyond those already provided under state law. The NAIC simultaneously adopted a Corporate Governance Model Regulation that delineates the contents of the annual disclosure. Insurers or insurer groups must file a Corporate Governance Annual Disclosure with their

[6] National Association of Insurance Commissioners, Own Risk and Solvency Assessment (ORSA) Brief, http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 23, 2016).
[7] Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with Banking and Insurance Committee).
[8] Section 624.316 (2)(a), F.S., provides that the OIR may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 5 years.

domestic regulator or the lead state regulator (for an insurance group) no later than June 1 of each year beginning in 2017. The key items in the Corporate Governance disclosure include:

- The insurer's corporate governance framework and structure including duties and structure of the Board of Directors and its committees;
- The policies and practices of its Board of Directors and significant committees including appointment practices, the frequency of meetings held and review procedures;
- The policies and practices directing Senior Management including a description of defined suitability standards, the insurer's code of conduct and ethics, performance evaluation and compensation practices, and succession planning; and
- The processes by which the Board of Directors, its committees and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's business activities including risk management processes, the actuarial function, and investment, reinsurance and business strategy decision-making processes.

The Corporate Governance Model Act is expected to become an NAIC accreditation standard.[9] According to the NAIC, five states[10] have adopted a version of the Corporate Governance Model Act in a substantially similar form. Florida has not adopted it.

III. Effect of Proposed Changes:

Section 1 creates s. 628.8015, F.S., which requires insurers or insurance groups (if applicable), to file an ORSA and Corporate Governance information with their domestic regulator or lead state, beginning in 2017.

Definitions

In addition to defining "corporate governance annual disclosure," "ORSA," "ORSA guidance manual," and "ORSA summary report," the bill defines the following:

- "Insurer" is defined to have the same meaning as in s. 624.03, F.S.,[11] but excludes state and federal agencies, authorities, instrumentalities, possessions, territories, or political subdivisions of a state.
- "Insurance group" is defined to mean insurers and affiliates included within an insurance holding company system.
- "Senior management" is defined to mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators. This includes, but is not limited to, a number of executives such as chief executive officer, chief financial officer, and chief risk officer.

[9] According to the NAIC, "The F Committee currently has out for a one year exposure the 2014 revisions to Models #305 and #306 for inclusion to the Accreditation Part A standards. The exposure period for this will end 12/31/2016. The F Committee will discuss this again at the 2017 Spring National Meeting and likely expose it for 30 days after – then consider adoption at the 2017 Summer National Meeting...if the Committee votes to adopt them into the Part A standards, the earliest it could be required for accreditation would be 1/1/19. There is a possibility the timeline could change." NAIC correspondence (Jan. 19, 2016) (on file with Senate Committee on Banking and Insurance).

[10] California, Indiana, Iowa, Louisiana, and Vermont have adopted the model act. Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with Banking and Insurance Committee).

[11] Section 624.03, F.S., defines "insurer" to mean every person engaged as an indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

ORSA Provisions

The bill incorporates the three major components of the ORSA, to require insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
  - This requirement may be satisfied by being a member of an insurance group with a risk management framework applicable to the insurer's operations;
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group), consistent with and comparable to the process in the ORSA Guidance Manual;[12]
- File an ORSA summary report, based on the ORSA Guidance Manual ,with their domestic regulator or lead state (for an insurance group), beginning in 2017, which must:
  - Be submitted once every calendar year;
  - Include notification to the OIR of its proposed annual submission date by December 1, 2016; the initial ORSA summary report must be submitted by December 31, 2017;
  - Include a brief description of material changes and updates from the prior year's report;
  - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide copy to board of directors or appropriate board committee; and
  - Be prepared in accordance with the ORSA guidance manual and insurer must maintain and make available for OIR examination documentation and supporting information.

ORSA Exemption & Waiver

The bill exempts an insurer from the ORSA requirement if:

- Its annual direct written and unaffiliated assumed premium is less than $500 million (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program), or
- It is a member of an insurance group with an annual direct written and unaffiliated assumed premium of $1 billion or less (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program).[13]

The bill also creates reporting obligations, contingent on the exempt status of the insurer and its insurance group. The OIR may still require an exempt insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report based on certain circumstances, such as risk-based capital that triggers a company-action-level event,[14] the exhibition of qualities of an insurer in hazardous financial condition, or if submission of the

[12] The bill defines "ORSA guidance manual" as the ORSA manual developed and adopted by the NAIC. *See* NAIC, *ORSA Guidance Manual* (Jul. 2014), at http://www.naic.org/store/free/ORSA_manual.pdf.

[13] According to the OIR, two property and casualty insurer groups and five life and health insurer groups meet the ORSA threshold and have Florida as the lead state. OIR, *Q&A on ORSA and CGAD* (Nov. 15, 2015), on file with the Banking and Insurance Committee.

[14] Section 624.81(11), F.S., authorizes the OIR to place an insurer under administrative supervision and order corrective action if the insurer is in unsound condition, exceeds its powers granted under its certificate of authority, or its practices are hazardous to the public. Commission rule defines "hazardous financial condition" in accordance with NAIC model regulation. Rule 69O-141.002, F.A.C.

report is in the best interests of the state. In addition, the bill allows OIR to grant a waiver to an otherwise non-exempt insurer based on unique circumstances, and specifies criteria for the OIR to consider.

Corporate Governance

The bill requires insurers or insurer members of insurance groups (of which the OIR is the lead state regulator) to submit a Corporate Governance Annual Disclosure every June 1, with an initial disclosure to be submitted by December 31, 2017. The chief executive officer or corporate officer must sign the disclosure, and must describe the insurer or insurance group's governance framework and structure, relevant policies and practices, and processes for overseeing critical risk areas affecting business activities.

The bill allows insurers and insurance groups to provide corporate governance information at the ultimate controlling parent level, the intermediate holding company level, or at the individual legal entity level. Additionally, insurers and insurance groups may make their Corporate Governance Annual Disclosure at levels at which the insurer or insurance group 1) determines risk appetite, 2) oversees or exercises coordinated supervision of earnings, capital, liquidity, operations, and reputation of the insurer, or 3) at which legal liability would be placed for failure of general corporate governance duties. The insurer or insurance group must indicate their level of reporting and explain any subsequent changes, and may meet these requirements by referring other relevant and existing documents, such as the ORSA summary report, Holding Company B or F filings, and Securities and Exchange Commission proxy statements.

Insurers and insurance groups must report subsequent changes to the Corporate Governance Annual Disclosure. The lead state may request additional information and must review the Corporate Governance Annual Disclosure in accordance with the NAIC Financial Handbook. The insurer or insurance group must maintain and make available upon examination or request by the OIR any documentation and supporting information relating to the disclosure.

Privilege & Confidentiality of ORSA and Corporate Governance

The bill provides that the ORSA and Corporate Governance filings and related documents that are submitted pursuant to this new provision, s. 628.8015, F.S., are privileged and not subject to subpoena or discovery directly from the OIR. The bill prohibits the OIR, or any person acting under the OIR's authority (such as third-party consultants), from testifying as to such filings or related documents in a private civil action. However, the OIR or the Department of Financial Services may use these filings and related documents in any regulatory or legal action it brings against an insurer as part of their official duties. The bill also provides that any applicable claims of privilege as to these filings and related documents are not waived simply because a disclosure to the OIR under this section or under any other provision of the Insurance Code. In 2014, substantially similar privilege language was enacted[15] for other insurer regulatory filings, regarding insurance holding company registration statements and annual enterprise risk reports[16] and annual actuarial opinions of reserves and supporting memoranda required of life insurers.[17]

[15] ch. 2014-101, ss. 8 and 11, Laws of Fla.
[16] Section 628.801(4), F.S.
[17] Section 625.1214, F.S.

Third-Party Consultants

The bill authorizes the OIR to retain third-party consultants at the expense of the insurer or the insurance group for assisting the OIR with ORSA and Corporate Governance Annual Disclosure responsibilities. The bill requires these third-party consultants to adhere to confidentiality and conflict of interest standards through a written agreement with the OIR. In other areas of the Insurance Code, the OIR has authority to contract with independent external auditors or examiners under the following provisions.[18]

Rulemaking

The bill authorizes the Financial Services Commission to adopt rules to administer the provisions of s. 628.8015, F.S.

Sanctions

Currently, s. 628.803, F.S., authorizes the OIR to impose sanctions on insurers and certain affiliated individuals of insurers for certain violations. The 2014 insurer solvency legislation authorizes the OIR to place an insurer under an order of supervision and to disapprove dividends or distributions, if the OIR finds that the insurer violated s. 628.461, F.S., (acquisition of controlling stock requirements) or s. 628.801, F.S., (insurance holding company registration statement and enterprise risk reporting requirements).[19]

Section 2 amends s. 628.803, F.S., to provide that the OIR may impose these fines for failure to submit an ORSA summary report or Corporate Governance Annual Disclosure, or may issue an order of supervision and disapprove dividends or distributions if an insurance company violates s. 628.8015, F.S., which is created by this bill. The OIR may impose a penalty of $100 per day for failure to file a report, not to exceed $10,000.

Section 3 provides the act will take effect October 1, 2016, if SB 1416 or similar 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:

None.

[18] Section 624.316(2)(e), F.S., the OIR general examination authority; s. 624.3161(3), F.S., the OIR market conduct examination authority; s. 624.44(1)(c), F.S., multiple-employer welfare arrangements; and s. 641.27(2), F.S., health maintenance organization examinations.
[19] Section 628.803(4), F.S.; ch. 2014-101, s. 12, Laws of Fla.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1422, insurers may incur additional administrative costs associated with preparing and submitting the ORSA report and the Corporate Governance Annual Disclosure. However, under the provisions of the Corporate Governance Annual Disclosure, insurers and insurance groups are permitted to reference existing documents and filings. For purposes of ORSA filings, insurers are required to file the ORSA Summary reports with the lead state regulator of the insurance group, thereby avoiding regulatory redundancies associated with reporting in each state.

C. Government Sector Impact:

According to the OIR, implementation of the bill is expected to have an insignificant impact on technology systems. The OIR can accommodate the collection of any additional information through their current system.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 628.803 of the Florida Statutes.

This bill creates section 628.8015 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on January 26, 2016:
The CS authorizes the Financial Services Commission to adopt rules; however, the

[20] Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with the Senate Committee on Banking and Insurance.)

adoption of such rules would be subject to the rule ratification provisions of s. 120.541(3), F.S. The CS also provides technical, conforming changes.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Simmons

597-02617-16 20161422c1

A bill to be entitled

An act relating to insurer regulatory reporting; creating s. 628.8015, F.S.; defining terms; requiring an insurer to maintain a risk management framework; requiring certain insurers and insurance groups to conduct an own-risk and solvency assessment; providing requirements for the preparation and submission of an own-risk and solvency assessment summary report; providing exemptions and waivers; requiring certain insurers and members of an insurance group to prepare and submit a corporate governance annual disclosure; providing disclosure and preparation requirements; specifying privilege requirements and prohibitions for certain filings and related documents; authorizing the Office of Insurance Regulation to retain third-party consultants for certain purposes; authorizing the Financial Services Commission to adopt rules; amending s. 628.803, F.S.; revising provisions relating to penalties to conform to the act; providing a contingent effective date.

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

Section 1. Section 628.8015, Florida Statutes, is created to read:

628.8015 Own-risk and solvency assessment; corporate governance annual disclosure.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Corporate governance annual disclosure" means a report filed by an insurer or insurance group in accordance with this section.

(b) "Insurance group" means insurers and affiliates

597-02617-16 20161422c1

included within an insurance holding company system.

(c) "Insurer" has the same meaning as in s. 624.03. However, the term does not include agencies, authorities, instrumentalities, possessions, or territories of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; or agencies, authorities, instrumentalities, or political subdivisions of a state.

(d) "Own-risk and solvency assessment" or "ORSA" means an internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the business plan of an insurer or insurance group and the sufficiency of capital resources to support those risks.

(e) "ORSA guidance manual" means the own-risk and solvency assessment guidance manual developed and adopted by the National Association of Insurance Commissioners.

(f) "ORSA summary report" means a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.

(g) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators and includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief risk officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other executive performing one or more of these functions.

(2) OWN-RISK AND SOLVENCY ASSESSMENT.—

(a) *Risk management framework.*—An insurer shall maintain a risk management framework to assist in identifying, assessing, monitoring, managing, and reporting its material and relevant risks. An insurer may satisfy this requirement by being a member of an insurance group with a risk management framework applicable to the operations of the insurer.

(b) *ORSA requirement.*—Subject to paragraph (c), an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with and comparable to the process in the ORSA guidance manual. The ORSA must be conducted at least annually and whenever there have been significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

(c) *ORSA summary report.*—

1.a. A domestic insurer or insurer member of an insurance group of which the office is the lead state, as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook, shall:

(I) Submit an ORSA summary report to the office once every calendar year.

(II) Notify the office of its proposed annual submission date by December 1, 2016. The initial ORSA summary report must be submitted by December 31, 2017.

b. An insurer not required to submit an ORSA summary report pursuant to sub-subparagraph a. shall:

(I) Submit an ORSA summary report at the request of the office, but not more than once per calendar year.

(II) Notify the office of the proposed submission date

within 30 days after the request of the office.

2. An insurer may comply with sub-subparagraph 1.a. or sub-subparagraph 1.b. by providing the most recent and substantially similar ORSA summary report submitted by the insurer, or another member of an insurance group of which the insurer is a member, to the chief insurance regulatory official of another state or the supervisor or regulator of a foreign jurisdiction. For purposes of this subparagraph, a "substantially similar" ORSA summary report is one that contains information comparable to the information described in the ORSA guidance manual as determined by the commissioner of the office. If the report is in a language other than English, it must be accompanied by an English translation.

3. The chief risk officer or chief executive officer of the insurer or insurance group responsible for overseeing the enterprise risk management process must sign the ORSA summary report attesting that, to the best of his or her knowledge and belief, the insurer or insurance group applied the enterprise risk management process described in the ORSA summary report and provided a copy of the report to the board of directors or the appropriate board committee.

4. The ORSA summary report must be prepared in accordance with the ORSA guidance manual. Documentation and supporting information must be maintained by the insurer and made available upon examination pursuant to s. 624.316 or upon the request of the office.

5. The ORSA summary report must include a brief description of material changes and updates since the prior year report.

6. The office's review of the ORSA summary report must be

conducted, and any additional requests for information must be made, using procedures similar to those used in the analysis and examination of multistate or global insurers and insurance groups.

(d) *Exemption.*—

1. An insurer is exempt from the requirements of this subsection if:

a. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than $500 million; or

b. The insurer is a member of an insurance group and the insurance group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than $1 billion.

2. If an insurer is:

a. Exempt under sub-subparagraph 1.a., but the insurance group of which the insurer is a member is not exempt under sub-subparagraph 1.b., the ORSA summary report must include every insurer within the insurance group. The insurer may satisfy this requirement by submitting more than one ORSA summary report for any combination of insurers if any combination of reports includes every insurer within the insurance group.

b. Not exempt under sub-subparagraph 1.a., but the insurance group of which it is a member is exempt under sub-subparagraph 1.b., the insurer must submit to the office the

ORSA summary report applicable only to that insurer.

3. The office may require an exempt insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report:

a. Based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;

b. If the insurer has risk-based capital for a company action level event pursuant to s. 624.4085(3), meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in rules adopted by the commission pursuant to s. 624.81(11), or exhibits qualities of an insurer in hazardous financial condition as determined by the office; or

c. If the office determines it is in the best interest of the state.

4. If an exempt insurer becomes disqualified for an exemption because of changes in premium as reported on the most recent annual statement of the insurer or annual statements of the insurers within the insurance group of which the insurer is a member, the insurer must comply with the requirements of this section effective 1 year after the year in which the insurer exceeded the premium thresholds.

(e) *Waiver.*—An insurer that does not qualify for an exemption under paragraph (d) may request a waiver from the office based upon unique circumstances. If the insurer is part of an insurance group with insurers domiciled in more than one state, the office must coordinate with the lead state and with

the other domiciliary regulators in deciding whether to grant a waiver. In deciding whether to grant a waiver, the office may consider:

1. The type and volume of business written by the insurer.

2. The ownership and organizational structure of the insurer.

3. Any other factor the office considers relevant to the insurer or insurance group of which the insurer is a member.

A waiver granted pursuant to this paragraph is valid until withdrawn by the office.

(3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

(a) *Scope.*—This section does not prescribe or impose corporate governance standards and internal procedures beyond those required under applicable state corporate law or limit the authority of the office, or the rights or obligations of third parties, under s. 624.316.

(b) *Disclosure requirement.*—

1.a. An insurer, or insurer member of an insurance group, of which the office is the lead state regulator, as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook, shall submit a corporate governance annual disclosure to the office by June 1 of each calendar year. The initial corporate governance annual disclosure must be submitted by December 31, 2017.

b. An insurer or insurance group not required to submit a corporate governance annual disclosure under sub-subparagraph 1.a. shall do so at the request of the office, but not more than once per calendar year. The insurer shall notify the office of

the proposed submission date within 30 days after the request of the office.

2. The chief executive officer or corporate secretary of the insurer or the insurance group must sign the corporate governance annual disclosure attesting that, to the best of his or her knowledge and belief, the insurer has implemented the corporate governance practices and provided a copy of the disclosure to the board of directors or the appropriate board committee.

3.a. Depending on the structure of its system of corporate governance, the insurer or insurance group may provide corporate governance information at one of the following levels:

(I) The ultimate controlling parent level;

(II) An intermediate holding company level; or

(III) The individual legal entity level.

b. The insurer or insurance group may make the corporate governance annual disclosure at:

(I) The level used to determine the risk appetite of the insurer or insurance group;

(II) The level at which the earnings, capital, liquidity, operations, and reputation of the insurer are collectively overseen and the supervision of those factors is coordinated and exercised; or

(III) The level at which legal liability for failure of general corporate governance duties would be placed.

An insurer or insurance group must indicate the level of reporting used and explain any subsequent changes in the reporting level.

4. The review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook.

5. An insurer or insurance group may comply with this paragraph by cross-referencing other existing relevant and applicable documents, including, but not limited to, the ORSA summary report, Holding Company Form B or F filings, Securities and Exchange Commission proxy statements, or foreign regulatory reporting requirements, if the documents contain information substantially similar to the information described in paragraph (c). The insurer or insurance group shall clearly identify and reference the specific location of the relevant and applicable information within the corporate governance annual disclosure and attach the referenced document if it has not already been filed with, or made available to, the office.

6. Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating changes that have been made. If changes have not been made in the previously filed disclosure, the insurer or insurance group should so indicate.

(c) *Preparation of the corporate governance annual disclosure.*—

1. The corporate governance annual disclosure must be prepared in a manner consistent with this subsection. Documentation and supporting information must be maintained and made available upon examination pursuant to s. 624.316 or upon

the request of the office.

2. The corporate governance annual disclosure must be as descriptive as possible and include any attachments or example documents used in the governance process.

3. The insurer or insurance group has discretion in determining the appropriate format of the corporate governance annual disclosure in communicating the required information and responding to inquiries, provided that the corporate governance annual disclosure includes material and relevant information sufficient to enable the office to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.

4. The corporate governance annual disclosure must describe the:

a. Corporate governance framework and structure of the insurer or insurance group.

b. Policies and practices of the most senior governing entity and significant committees.

c. Policies and practices for directing senior management.

d. Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas that have an impact on the insurer's business activities.

(4) CONFIDENTIALITY.—The filings and related documents submitted pursuant to subsections (2) and (3) are privileged and not subject to subpoena or discovery directly from the office. However, the department or office may use these filings and related documents in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties

of the department or office. A waiver of any applicable claim of privilege in these filings and related documents may not occur because of a disclosure to the office under this section, because of any other provision of the Insurance Code, or because of sharing under s. 624.4212. The office or a person receiving these filings and related documents, while acting under the authority of the office, or with whom such filings and related documents are shared pursuant to s. 624.4212, is not permitted or required to testify in any private civil action concerning any such filings or related documents.

(5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain third-party consultants at the expense of the insurer or insurance group for the purpose of assisting it in the performance of its regulatory responsibilities under this section, including, but not limited to, the risk management framework, the ORSA, the ORSA summary report, and the corporate governance annual disclosure. A third-party consultant must agree, in writing, to:

(a) Adhere to confidentiality standards and requirements applicable to the office governing the sharing and use of such filings and related documents.

(b) Verify to the office, with notice to the insurer, that the consultant is free of any conflict of interest.

(c) Monitor compliance with applicable confidentiality and conflict of interest standards pursuant to a system of internal procedures.

(6) RULE ADOPTION.—The commission may adopt rules to administer this section.

Section 2. Subsections (1) and (4) of section 628.803,

Florida Statutes, are amended to read:

628.803 Sanctions.—

(1) Any company failing, without just cause, to file any registration statement or certificate of exemption required to be filed pursuant to commission rules relating to this part or to submit an ORSA summary report or a corporate governance annual disclosure required pursuant to s. 628.8015 shall, in addition to other penalties prescribed under the Florida Insurance Code, be subject to pay a penalty of $100 for each day's delay, not to exceed a total of $10,000.

(4) If the office determines that any person violated s. 628.461, ~~or~~ s. 628.801, or s. 628.8015, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part VI of chapter 624.

Section 3. This act shall take effect October 1, 2016, if SB 1416 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1442
INTRODUCER:	Banking and Insurance Committee; Health Policy Committee; and Senator Garcia
SUBJECT:	Out-of-network Health Insurance Coverage
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Johnson	Knudson	BI	**Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1442 prohibits an out-of-network provider from balance billing members of a preferred provider organization (PPO) or an exclusive provider organization (EPO) for covered emergency services or covered nonemergency services. The bill establishes a payment process for insurers to provide reimbursement for such out-of-network services.

The bill requires insurers to provide coverage for emergency services without a prior authorization determination and regardless of whether the provider is a participating provider. Applicable cost sharing must be the same for participating or nonparticipating providers for the same services.

The bill also provides that willful noncompliance by a provider (health care practitioners subject to regulation under ch. 456, 458, or 459, F.S.) with the balance billing provisions for covered emergency services and nonemergency services, are grounds for discipline by the Department of Health (DOH) if such noncompliance occurs with such frequency as to constitute a general business practice. Other specified providers (hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers) are required to comply with the balance billing provisions as a condition of licensure.

In order to put the public on notice, hospitals are required under the bill to maintain information on their websites about insurers and health maintenance organizations for which the hospital is a contracted provider, as well as contact information for practitioners and practice groups

contracting with the hospital. The bill adds compliance with these new provisions as a condition of licensure for hospitals, surgical centers, and urgent care centers.

The bill has an indeterminate fiscal impact on state government.

Except as otherwise expressly provided, the effective date of the bill is October 1, 2016.

II. Present Situation:

The Office of Insurance Regulation (OIR) is responsible for the licensure and regulation of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.[1]

Balance Billing – Preferred Provider Organizations and Exclusive Provider Organizations

Generally, individuals purchase insurance coverage for protecting themselves from future expenses, or in the case of health insurance, unexpected medical bills or large health care costs. Preferred provider organization (PPOs) and exclusive provider organization (EPOs) contract with health care providers at set reimbursement rates for covered medical services. A PPO is a group of licensed health care providers with which the insurer has contracted for alternative or reduced rates of payment.[2]

An exclusive provider is a provider of health care, or a group of providers of health care, that has entered into a written agreement with an insurer to provide benefits under a health insurance policy.[3] In an EPO, an insurer contracts with hospitals, physicians, and other medical facilities. Insureds of an EPO must use the contracted hospitals or providers to receive covered benefits from this type of plan. Providers within an EPO or PPO network are prohibited from billing or otherwise seeking reimbursement from or recourse against any policyholder. Insurers and HMOs may require higher copayments for urgent care or primary care provided in an emergency department and higher copayments for use of out-of-network emergency departments.[4]

Under these types of coverage, an insured individual is responsible for any applicable copayments, coinsurance, or deductibles if services are obtained from a contracted provider. If the insured receives services from a non-contracted provider and the provider does not reach a reimbursement agreement with the PPO or EPO insurer, the provider may balance bill the insured for the difference between the cost of the services and what the PPO or EPO paid for the services. However, balance billing is prohibited under current law for health care services under Medicaid[5] by an exclusive provider who is part of an EPO[6] or a by provider who is under

[1] Section 20.121(3)(a), F.S.
[2] Section 627.6471, F.S.
[3] Section 627.6472, F.S.
[4] Sections 627.6405 and 641.31(12), F.S.
[5] Section 409.907(3)(j), F.S.; Medicaid managed care plans and their providers are required to comply with Provider General Handbook, which prohibits balance billing. In addition, the Statewide Medicaid Managed Care Contract (Core Provisions of the MMA Contract (Nov. 1, 2015) version, pp. 104-105) establishes minimum requirements for contracts between the managed care plans and its contracted providers. Except for copayments, the contract prohibits the provider from seeking payment from the enrollee for any covered services, and to seek payment from the managed care plan.
[6] Section 627.6472(4)(e), F.S.

contract with a prepaid limited service organization.[7] If the insured did not knowingly use a non-contracted provider, especially in an emergency services situation, the invoice for balance billing is often not expected and is known as a "surprise bill."

A recent survey by the Kaiser Family Foundation found that among insured, non-elderly adults, nearly seven in ten individuals with unaffordable out-of-network medical bills were unaware that the health care provider was not part of their plan's network at the time they received care.[8] In these situations, having insurance did not necessarily protect individuals from unaffordable medical bills. In the same survey, one in five working age, insured individuals reported trouble paying medical bills that caused serious financial challenges, and the number was higher within the uninsured (53 percent).[9] Among the insured, 26 percent said they received unexpected denials and 32 percent said they received care from an out-of-network provider their insurance would not cover.[10] Insured individuals with higher deductible health plans were more likely to report medical bill issues than those with lower deductible plans (26 percent compared to 15 percent).[11]

According to a 2014 OIR balance billing survey, insurers reported $97.9 million in potential balance billings associated with out-of-network emergency claims. Further, insurers reported $1.3 billion in potential balance billings associated with out-of-network nonemergency claims.[12]

Balanced Billing – Health Maintenance Organizations

Generally, an HMO member must use the HMO's network of health care providers in order for the HMO to provide payment of benefits, except in the case of an emergency. In an emergency, an HMO is liable for payment of fees for services rendered to a subscriber by a provider, contracted or non-contracted, and the subscriber is not liable for payment of fees to the provider.[13] A provider, regardless of whether contracted or not with the HMO, may not collect or attempt to collect money from a subscriber of an HMO for payment of services for which the HMO is liable, if the provider in good faith knows or should know that the HMO is liable.[14] However, a provider can balance bill a subscriber in a nonemergency situation if authorization is denied or if a non-contract provider does not seek prior authorization.[15]

Florida law requires HMOs to provide coverage without prior authorization for emergency care,

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[7] Section 636.035(3)-(4), F.S.
[8] Kaiser Family Foundation, *Surprise Medical Bills* (January 2016), *available at* http://kff.org/private-insurance/issue-brief/surprise-medical-bills/ (last visited Jan. 27, 2016).
[9] Kaiser Family Foundation, *New Kaiser/New York Times Survey Finds One in Five Working Age Americans With Health Insurance Report Problems Paying Medical Bills* (January 5, 2016) *available at* http://kff.org/health-costs/press-release/new-kaisernew-york-times-survey-finds-one-in-five-working-age-americans-with-health-insurance-report-problems-paying-medical-bills/ (last visited Feb. 11, 2016).
[10] Id.
[11] Id.
[12] Office of Insurance Regulation, *2014 Balance Billing Data* (Feb. 2015) (on file with Senate Committee on Banking and Insurance).
[13] Section 641.3154(1), F.S.
[14] Section 641.3154(4), F.S.
[15] *See also* FLORIDA MEDICAL ASSOCIATION, *Balance Billing*, http://www.flmedical.org/LRC_Balance_billing.aspx (last visited Feb. 11, 2016).

based on a determination by a hospital physician or other personnel.[16] Prehospital and hospital-based trauma services and emergency services must be provided to a subscriber of an HMO as required under ss. 395.1041, 395.4045, and 401.45, F.S. When such services are obtained from an out-of-network provider, the statute establishes the reimbursement rate for the provider as the lesser of the provider's charges, the usual and customary charges[17] for similar services in the community where the services were provided, or the charges mutually agreed to by the HMO and the provider within 60 days of the claim submittal.[18]

Required Description of Coverage

The Florida Insurance Code requires insurers and HMOs to provide a description of coverage, benefits, and limitations of a policy or contract. This document may include an outline of coverage explaining the principal exclusions and limitations of the policy.[19]

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA) licenses and regulates hospitals, ambulatory surgical centers, home health agencies, clinical laboratories, nursing homes, assisted living facilities, and all other types of health care providers under ch. 395, F.S. The AHCA is responsible for inspections and investigations as part of the licensure process, including inspections to investigate emergency access complaints.[20]

The AHCA also regulates quality of care provided by HMOs and EPOs. Before receiving a certificate of authority from the OIR, an HMO or EPO must receive a health care provider certificate (HCPC) from the AHCA pursuant to part III of ch. 641, F.S.[21] As part of the review process to receive an HCPC for any given area, the plans must demonstrate the ability to provide quality of care consistent with the prevailing standards of care.[22]

Access to Emergency Services and Care

The Federal Emergency Medical Treatment and Active Labor Act

In 1986, Congress enacted the Emergency Medical Treatment and Active Labor Act (EMTALA) to ensure public access to emergency services, regardless of ability to pay.[23] The EMTALA

[16] Section 641.513, F.S.
[17] The interpretation of "usual and customary charges" has been the subject of litigation between providers and insurers. In 2010, a court held that the determination of fair market value of a hospital's emergency services could include consideration of amounts billed and accepted by the hospital except for Medicare and Medicaid payments.[17] In determining the fair market value of the services, it is appropriate to consider the amounts billed and the amounts accepted by providers with one exception. The reimbursement rates for Medicare and Medicaid are set by government agencies and cannot be said to be "arms' length." Moreover, in the emergency room context, hospitals do not have the option that private providers have to refuse to provide services to Medicare or Medicaid patients. Thus, it is not appropriate to consider the amounts accepted by providers for patients covered by Medicare and Medicaid. *See: Baker County Medical Services, Inc. v. Aetna health Management LLC and Humana Medical Plan*, 31 So.3d 842 (Fla. 1st DCA 2010).
[18] Section 641.513(5), F.S.
[19] Section 627.642, F.S.
[20] Section 395.0161(1)(e), F.S.
[21] Sections 641.21(1) and 641.48, F.S.
[22] Section 641.495, F.S.
[23] 42 U.S. Code s. 1395dd.

imposes specific obligations on hospitals participating in the Medicare program and which offer emergency services. Any patient who comes to the emergency department must be provided with a medical screening examination to determine if the patient has an emergency medical condition. If an emergency condition exists, the hospital must provide treatment within its service capability to stabilize the patient. If a hospital is unable to stabilize a patient, or upon the patient's request, the hospital must transfer the patient to another appropriate facility. A hospital that violates EMTALA is subject to civil penalty, termination of its Medicare agreement, or civil suit by a patient who suffers personal harm. The EMTALA does not provide for civil action against a hospital's physicians.

Requirements in Florida Law for Access to Emergency Services

Florida law imposes similar requirements on hospitals that in some ways are more stringent than EMTALA.[24] AHCA is required to maintain an inventory of the service capability of all licensed hospitals that provide emergency care in order to assist emergency medical services (EMS or ambulance) providers and the public in locating appropriate medical care.

Under Florida law, every general hospital that has an emergency department must provide emergency services and care for any emergency medical condition when:

- Any person requests emergency services and care; or
- Emergency services and care are requested on behalf of a person by:
  - An EMS provider who is rendering care to or transporting the person; or
  - Another hospital, when such hospital is seeking a medically necessary transfer, except as otherwise provided.[25]

Arrangements for transfers of patients seeking or receiving emergency services must be made between hospital emergency services personnel for each hospital, unless other arrangements between the hospitals exist. A patient, whether stabilized or not, may be transferred to another hospital that has the service capability or is not at service capacity, only if:

- The patient, or a person who is legally responsible for the patient and acting on the patient's behalf, after being informed of the hospital's obligations and of the risk of transfer, requests that the transfer be effected;[26]
- A physician has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risks to the individual's medical condition;[27] or
- In cases in which a physician is not physically present at the time of transfer, a qualified medical person, in consultation with a physician, signs a certification that the consulting physician has determined that the medical benefits reasonably expected from medical treatment at another facility outweigh the increased risks to the patient, provided that the consulting physician countersigns the certification.[28]

[24] *See* s. 395.1041, F.S.
[25] *See* s. 395.1041(3)(a), F.S.
[26] *See* s. 395.1041(3)(c)1., F.S.
[27] *See* s. 395.1041(3)(c)2., F.S.
[28] *See* s. 395.1041(3)(c)3., F.S.

However, the provisions above relating to patient transfers do not require facilities to accept a transfer that is not medically necessary.[29]

When the condition of a medically necessary transferred patient improves so that the service capability of the receiving hospital is no longer required, the receiving hospital may transfer the patient back to the transferring hospital, and the transferring hospital is required to receive the patient within its service capability.[30]

Each hospital must ensure emergency services can be provided at all times either directly or through an arrangement with another hospital. Hospitals are expressly prohibited from allowing the provision of emergency services and care, the acceptance of a medically necessary transfer, or the return of a patient previously transferred, to be based upon, or affected by, the patient's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services, except to the extent that a circumstance such as age, sex, preexisting medical condition, or physical or mental handicap is medically significant to the provision of appropriate medical care to the patient.[31]

A hospital that violates Florida's access to emergency care statute is subject to administrative penalties; denial, revocation, or suspension of its license; and civil action by another hospital or physician suffering financial loss. In addition, hospital administrative or medical staff are subject to a civil suit by a patient who suffers personal harm and may be found guilty of a second degree misdemeanor for a knowing or intentional violation. Physicians who violate the act are also subject to disciplinary action against their license and civil action by another hospital or physician suffering financial loss.[32]

Pre-hospital Care

The Emergency Medical Transportation Services Act[33] (EMTSA) similarly regulates the services provided by emergency medical technicians, paramedics, and air and ground ambulances. The EMTSA establishes minimum standards for emergency medical services personnel, vehicles, services, and medical direction, and provides for monitoring of the quality of patient care. The Florida Department of Health (DOH) administers and enforces these standards. Ambulance services operate pursuant to a license issued by the DOH and a certificate of public convenience and necessity issued from each county in which the provider operates.[34] A licensee may not deny a person necessary prehospital treatment or transport for an emergency medical condition.[35] A violation may result in denial, suspension, or revocation of a license, or a reprimand or fine.[36]

In general, the medical director of an ambulance provider is responsible for issuing standing orders and protocols to ensure that the patient is transported to a facility that offers the type and

[29] *See* s. 395.1041(3)(c), F.S.
[30] *See* s. 395.1041(3)(e), F.S.
[31] *See* s. 395.1041(3)(f), F.S.
[32] *See* s. 395.1041(5), F.S.
[33] Part III of chapter 401, F.S. (ss. 401.2101-401.465, F.S.)
[34] Section 401.25(2)(d), F.S.
[35] Section 401.45, F.S.
[36] Section 401.411, F.S.

level of care appropriate to the patient's medical condition, with separate protocols required for stroke patients.[37] An exception to the general requirement is that trauma alert patients are required by statute to be transported to an approved trauma center.[38]

Federal Patient Protection and Affordable Care Act (PPACA)

On March 23, 2010, President Obama signed into law Pub. L. No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, which amended the PPACA. The PPACA provides fundamental changes to the U.S. health insurance system by requiring health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements, including required benefits, rating and underwriting standards, required review of rate increases, and other requirements. Emergency services is one of the required essential health benefits.[39]

PPACA Regulations on Charitable Hospitals

In February 2015, the U.S. Department of the Treasury released a regulation impacting charitable hospital organizations. The regulation is based on requirements in the PPACA for certain hospitals to conduct a community health needs assessment and adopt an implementation strategy once every three years to establish a written financial assistance policy (FAP) and a written policy related to care for emergency medical conditions.[40] Hospitals are also required to make reasonable efforts to determine whether an individual is eligible for assistance under a FAP before engaging in extraordinary collection activities.[41] In general, the final regulation requires charitable hospitals to:

- Limit charges to no more than the amounts generally billed to patients with insurance;
- Establish and disclose financial assistance policies;
- Abide by reasonable billing and collection requirements; and
- Perform a community health needs assessment at least every three years.

Federal Emergency Room Coverage Regulations

On June 28, 2010, the U.S. Department of Health and Human Services issued final regulations relating to coverage for emergency services.[42] Such coverage for emergency services is not subject to prior authorization, regardless of whether the provider is a participating provider. Services provided by out-of-network providers must be provided with cost sharing that is no greater than that which would apply for a network provider and without regard to any other restriction, other than an exclusion or coordination of benefits, an affiliation or waiting period,

[37] Section 395.3041(3), F.S.
[38] Section 395.4045, F.S.
[39] 42 U.S.C. s. 300gg-6.
[40] Internal Revenue Service, *Internal Revenue Bulletin: 2015-5, Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return,* (February 2, 2015) *available at* https://www.irs.gov/irb/2015-5_IRB/ar08.html (last visited Feb. 11, 2016).
[41] Id.
[42] 42 U.S.C. s. 300gg-19A.

and cost-sharing. Regulations specify minimum reimbursement that plans must pay a non-network provider for emergency services.[43] Plans are required to pay out-of-network providers a reasonable rate, which is defined to be the highest amount of the following:

- The amount negotiated with in-network providers for the emergency service furnished, with the stipulation that if the plan has more than one negotiated amount with providers for a particular service, the basis for payment would be the median amount;
- The amount for the emergency service calculated using the same method the plan generally uses to determine payments for out-of-network services (such as the usual, customary, and reasonable charges) but substituting the in-network cost-sharing provisions for the out-of-network cost-sharing; or
- The amount that would be paid under Medicare for the emergency services.

Subsequently, on September 20, 2010, the U.S. Centers for Medicare & Medicaid Services issued guidance relating to coverage for emergency services.[44] If a state law prohibits balance billing, plans and issuers are not required to satisfy the payment minimums set forth in the regulations described above. Similarly, if a plan or issuer is contractually responsible for any amounts balance billed by an out-of-network emergency services provider, the plan or issuer is not required to satisfy the payment minimums. In both situations, however, patients must be provided with adequate and prominent notice of their lack of financial responsibility with respect to such amounts, to prevent inadvertent payment by the patient. Nonetheless, even if state law prohibits balance billing, or if the plan or issuer is contractually responsible for amounts balance billed, the plan or issuer may not impose any copayment or coinsurance requirement that is higher than the copayment or coinsurance requirement that would apply if the services were provided in network.[45]

Statewide Provider and Health Plan Claim Dispute Resolution Program

The Statewide Provider and Health Plan Claim Dispute Resolution Program provides assistance to contracted and non-contracted providers and HMOs, insurers, prepaid health clinics, EPOs, and Medicaid prepaid health plans for resolution of claim disputes that are not resolved by the provider and the plan. Section 408.7057, F.S., requires the AHCA to contract with a third party resolution organization to timely review and consider claim disputes and to submit recommendations to the AHCA. The AHCA's responsibility is to issue a final order adopting the recommendation of the resolution organization.

Since May 2001, MAXIMUS has been under contract with the AHCA to review claim disputes. The cost of the program is borne by the users of the program. The non-prevailing entity in AHCA's final order must pay the review costs. In cases where both parties prevail in part, the review cost must be shared. The review costs are determined by MAXIMUS and depend largely on the complexity of the cases submitted.

[43] 45 C.F.R. s. 147.138(b).
[44] *See* Centers for Medicare and Medicaid Services, The Center for Consumer and Insurance Oversight, http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs.html#Out-Of-Network Emergency Services (last visited Feb. 11, 2016).
[45] *Id.*

Eligible Claims

Claim disputes may be submitted by physicians, hospitals, institutions, other licensed health care providers, HMOs, EPOs, PHPs, major medical expense health insurance policies offered by a group or an individual health insurer, and PPOs. Hospital and physicians are required to aggregate claims (for one or more patients for same insurer) by type of service to meet certain thresholds:[46]

• Hospital Inpatient Claims (contracted providers)	$25,000
• Hospital Inpatient Claims (non-contracted providers)	$10,000
• Hospital Outpatient Claims (contracted providers)	$10,000
• Hospital Outpatient Claims (non-contracted providers)	$ 3,000
• Physicians	$ 500
• Rural Hospitals	None
• Other Providers	None

The following types of claims are not eligible for the program:

- Claims for less than minimum amounts listed above for each type of service;
- Claim disputes that are the basis for an action pending in state or federal court;
- Claims disputes that are subject to an internal binding managed care organization's resolution process for contracts entered into prior to October 1, 2000;
- Claims solely related to late payment and/or late processing;
- Interest payment disputes;
- Medicare claim disputes that are part of Medicare managed care internal grievance or that qualify for Medicare reconsideration appeal;
- Claims related to health plans not regulated by the state of Florida; and
- Claims filed more than 12 months after final determination by the health plan or provider.

During 2014, only 25 claim disputes were filed for consideration. Nine of the 25 claim disputes were accepted as eligible claims for review. At year-end, one case was settled; four cases were under review; and the plans opted-out of the remaining four cases. [47] In 2015, nine claim disputes were filed for consideration. Of those nine, only one was accepted as an eligible claim for review and settled, and three are still under review for acceptance. The remaining five were ineligible.[48]

III. Effect of Proposed Changes:

Section 1 amends s. 395.003, F.S., to require hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers to comply with the provisions of ss. 627.64194, and 641.513, F.S., as a condition of licensure.

[46] Claim thresholds are established by Rule 59A-12.030, F.A.C.

[47] Section 408.7057, F.S., requires the AHCA to submit an annual report to the Governor and the Legislature on the status of the program. *See* Agency for Health Care Administration. *Statewide Provider and Health Plan Claim Dispute Resolution Program Annual Report* (Feb. 2015) available at: https://ahca.myflorida.com/mchq/Health_Facility_Regulation/Commercial_Managed_Care/docs/SPHPClaimDRP/AnnualReportFeb-2015.pdf.

[48] *See* Agency for Health Care Administration. *Statewide Provider and Health Plan Claim Dispute Resolution Program Annual Report* (Feb. 2016) (on file with Senate Committee on Banking and Insurance).

Section 2 amends s. 395.301, F.S., to add website-posting requirements for hospitals. A hospital must post the following information:

- The names and hyperlinks for direct access to the websites of all health insurers and HMOs for which the hospitals contracts as a network provider or a participating provider;
- As applicable, the names, mailing addresses, and telephone numbers of the health care practitioners and practice groups under contract with the hospital to provide services in the hospital, and how to contact them to determine in which health insurers and HMOs they are participating providers; and
- A statement that:
  - Services provided in the hospital by health care practitioners may not be included in the hospital's charges;
  - Health care practitioners who provide services in the hospital may or may not participate in the same health insurance plans as the hospital; and
  - Prospective patients should contact the health care practitioner arranging for the services to determine the health care plans in which the health care practitioner participates.

Section 3 amends s. 408.7057, F.S., to revise the statewide provider and health plan claim dispute resolution program. The bill authorizes the provider or a health plan to make an offer to settle a claim dispute by providing financial incentives for resolution. The party making the offer to settle must state its total amount offered and provide the other party 15 days to respond. If the party receiving the offer does not accept the offer and the final order is more than 90 percent or less than 110 percent of the offer amount, the party receiving the offer must pay the final order amount to the offering party and is deemed the non-prevailing party. The amount of an offer made by a provider to settle an alleged underpayment by a health plan must be greater than 110 percent of the reimbursement amount the provider received. The offer made by a health plan to settle an alleged overpayment to the provider must be less than 90 percent of the alleged overpayment by the health plan. Both parties may agree to settle the disputed claim at any time, for any amount, regardless of whether an offer to settle was made or rejected.

Sections 4, 5, and 6 amends ss. 456.072, 458.331, and 459.015, F.S., respectively, to add as grounds for discipline of a licensee of the Department of Health (DOH) for the willful failure to comply with the provision s. 627.64191, F.S., or s. 641.513, F.S., with such frequency as to constitute a general business practice.

Section 7 amends s. 626.9541, F.S., to provide that a willful violation of s. 627.64194, F.S., by an insurer with such frequency as to indicate a general business practice would constitute an unfair insurance trade practice under s. 626.9541(1), F.S.

Section 8 creates s. 627.64194, F.S., to expand protection for out-of-network coverage of emergency services and covered nonemergency services for insureds of preferred provider organization (PPO) and exclusive provider organization (EPO) networks. Under this section, the following terms are defined:

- *Emergency services* means the services and care to treat an emergency medical condition, as defined in s. 641.47(8), F.S.;[49]

[49] "Emergency services and care" means medical screening, examination, and evaluation by a physician, or to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an

- *Facility* means a licensed facility as defined in s. 395.002(16), F.S.,[50] or an urgent care center as defined in s. 395.002(30), F.S.;[51]
- *Nonemergency services* means the services and care to treat a condition other than an emergency medical condition;[52]
- *Nonparticipating provider* means a provider who is not a "preferred provider" as defined in s. 627.6471, F.S.,[53] or an "exclusive provider" as defined in s. 627.6472, F.S.;[54]
- *Participating provider* means a "preferred provider" as defined in s. 627.6471, F.S., and an "exclusive provider" as defined in s. 627.6472, F.S., but not a facility licensed under ch. 395, F.S.; and
- *Insured* means a person who is covered under an individual or group health insurance policy delivered or issued for delivery in this state by an insurer authorized to transact business in this state.

For purposes of covered emergency services, a facility licensed under ch. 395, F.S., or an urgent care center is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.

The bill requires the insurer to be solely responsible for payment to a nonparticipating provider for emergency services in accordance with the coverage terms of the health insurance policy. The insured's liability for payment of fees to a nonparticipating provider of emergency services is limited to applicable coinsurance, copayments, and deductibles. The insurer must provide coverage for emergency services that:

- Does not require a prior authorization;

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emergency medical condition exists, and if it does, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency condition within the service capability of a hospital.

[50] "Licensed facility" means a hospital, ambulatory surgical center, or mobile surgical center licensed in accordance with this chapter.

[51] "Urgent care center" means a facility or clinic that provides immediate but not emergent ambulatory medical care to patients. The term includes an offsite emergency department of a hospital that is presented to the general public in any manner as a department where immediate and not only emergent care is provided. The term also includes: (a) An offsite facility of a facility licensed under this chapter, or a joint venture between a facility licensed under this chapter and a provider licensed under chapter 458 or chapter 459, that does not require a patient to make an appointment and is presented to the general public in any manner as a facility where immediate but not emergent care is provided. (b) A clinic organization that is licensed under part X of ch. 400, F.S., maintains three or more locations using the same or similar name, does not require a patient to make an appointment, and holds itself out to the public in any manner as a facility or clinic where immediate but not emergent medical care is provided.

[52] "Emergency medical condition" means (a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following: 1. Serious jeopardy to patient health, including a pregnant woman or fetus. 2. Serious impairment to bodily functions. 3. Serious dysfunction of any bodily organ or part. (b) With respect to pregnant women: 1. That there is inadequate time to effect safe transfer to another hospital prior to delivery. 2. That a transfer may pose a threat to the health and safety of the patient or fetus; or 3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

[53] "Preferred provider" means any licensed health care provider with which the insurer has directly or indirectly contracted for an alternative or a reduced rate of payment, which shall include any health care provider listed in s. 627.419(3) and (4), F.S., and shall provide reasonable access to such health care providers.

[54] "Exclusive provider" means a provider of health care, or a group of providers of health care, that has entered into a written agreement with the insurer to provide benefits under his section, which agreement shall include any health care provider listed in s. 627.419(3) and (4), F.S., and shall provide reasonable access to such health care providers.

- Pays for emergency services regardless of whether the service is furnished by a participating or nonparticipating provider; and
- Imposes coinsurance, copayment, or limitation of benefits for a nonparticipating provider only if the same applies to a participating provider.

Under the bill, the insurer, not the insured, is liable for payment of fees to a nonparticipating provider other than applicable coinsurance, copayments and deductibles, for covered nonemergency services provided to an insured pursuant with coverage terms of the health insurance policy, and such insured is not liable for payment of fees to a nonparticipating provider for covered nonemergency services that are:

- Provided in a facility licensed under ch. 395, F.S., which has a contract with the insurer for nonemergency services that the facility would be otherwise obligated to provide under contract with the insurer; and
- Provided when the insured has no ability and opportunity to choose a participating provider at the facility who is available to treat the insured.

An insurer must reimburse the nonparticipating provider for services provided to an insured in the manner specified under s. 641.513(5), F.S.,[55] reduced only by an insured's cost sharing responsibilities provided in the policy, and within the specified timeframes of s. 627.6131, F.S.[56] A nonparticipating provider of covered emergency services or nonemergency services may not collect or attempt to collect from the insured any amount in excess of applicable coinsurance, copayments, or deductibles. A provider may collect or attempt to collect from an insured an amount due for the provision of uncovered services.

If there is a dispute as to the amount of the reimbursement to the nonparticipating provider of either emergency or nonemergency services, the dispute must be resolved in either a court of competent jurisdiction or by the voluntary dispute resolution process in s. 408.7057, F.S.

Section 9 amends s. 627.6471, F.S., to require that an insurer must make a current list of preferred providers available on its website. The bill requires that the preferred provider list be ordered by specialty, where applicable, and include the names, addresses, and telephone numbers of all participating providers, including facilities, and in the case of physicians, their board specialties, languages spoken, and affiliations with local hospitals. The website must be updated on at least a calendar month basis with additions and terminations of providers from the network and any changes in physician hospital affiliations.

Section 10 amends s. 627.6471, F.S., relating to insurance contracts and policies for preferred provider networks, effective upon the bill becoming law. While current law requires any insurer issuing a policy under s. 627.6471, F.S., to provide each policyholder and certificate holder with a current list of preferred providers, the bill requires any such health insurance policy issued after January 1, 2017, to also include the following specific disclosure to policyholders:

[55] Under this statute, the nonparticipating provider may be reimbursed for emergency services in an amount which is the lesser of: the provider's charges; the usual and customary provider charges for similar services in the community where the services were provided; or the charge mutually agreed to by the health maintenance organization and the provider within 60 days of submittal of the claim.

[56] Typically, with an electronically submitted claim, an insurer shall pay the claim within 20 days after receipt or notify the provider or designee if the claim is to be denied or contested.

> WARNING: LIMITED BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED. You should be aware that when you elect to utilize the services of a nonparticipating provider for a covered nonemergency service, benefit payments to the provider are not based upon the amount the provider charges. The basis of the payment will be determined according to your policy's out-of-network reimbursement benefit. Nonparticipating providers may bill insureds for any difference in the amount. YOU MAY BE REQUIRED TO PAY MORE THAN THE COINSURANCE OR COPAYMENT. Participating providers have agreed to accept discounted payments for services with no additional billing to you other than coinsurance and deductible amounts. You may obtain further information about the providers who have contracted with your insurance plan by consulting your insurer's website or contacting your insurer or agent directly.

Section 11 amends s. 627.662, F.S., to apply the provisions of s. 627.64194, F.S., relating to coverage requirements for services provided by out-of-network providers and payment collection limitations, to group health insurance, blanket health insurance, and franchise health insurance.

Section 12 provides that, except as otherwise expressly provided, the bill is effective October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact"

Under CS/CS/SB 1442, patients covered by an exclusive provider organization (EPO) or preferred provider organization (PPO) will not be subject to balance billing for emergency services provided by nonparticipating providers. An insurer is liable for the payment of covered nonemergency services provided by nonparticipating providers if the services are provided in a facility that has a contract with the insurer for the

nonemergency services, which the facility would be otherwise obligated to provide under the contract, and if the insured does not have the ability and opportunity to select a participating provider.

Hospitals will be required to post and maintain information on their websites about which insurers, health maintenance organizations (HMOs), practitioners, and group practices with which they contract, to put the public on notice. The hospitals may incur an indeterminate amount of costs to comply with this notice requirement.

To the extent that the options provided for determining reimbursement of an out-of-network emergency services claim are different from how an insurer or health care provider currently is reimbursed, the formula for reimbursement may have a fiscal impact on the affected parties.

C. Government Sector Impact:

The bill adds a new licensing condition for the Agency for Health Care Administration (AHCA) to consider when inspecting hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers, which may involve an indeterminate amount of additional time and resources for the completion of an inspection.

The Department of Health (DOH) may experience an indeterminate amount of additional workload relating to the bill's new disciplinary grounds.

There is a potential negative fiscal impact of the bill on the Division of State Group Insurance.[57] The impact does not require an appropriation; rather, it indicates a potential impact to the State Employees' Group Health Self-Insurance Trust Fund to be considered through future Self-Insurance Estimating Conferences. The future impact on employer and employee contributions is unknown.

[57] February 23, 2016, email from Department of Management Services (DMS) staff on file with the Committee on Appropriations. An analysis done by the DMS, in consultation with actuarial consultants Foster & Foster, indicated a potential negative fiscal impact of $7 to $14 million annually on the State Employees' Group Health Self-Insurance Trust Fund. According to Foster & Foster, this is a rough estimate based on a limited amount of time to analyze the bill language, limited supporting data, and the inclusion of very broad assumptions:

- The estimate was developed by reviewing one current contracted carrier's experience with non-participating provider claims in a recent three-month period.
- Non-participating providers who currently accept offers of payment based on contracted rates are assumed to be reimbursed at a level equivalent to their reasonable and customary fees.
- All non-participating providers subject to the bill are assumed to settle for amount 11 percent above their reasonable and customary fees.

The analysis performed by Foster & Foster assumes participation in the Statewide Provider and Health Plan Claim Dispute Resolution Program process; however, the current definition of "health plan" in s. 408.7057(1)(b), F.S., does not reference the State Group Insurance Program as defined in s. 110.123(2)(j), F.S. The Department of Management Services and Foster & Foster are conducting a more in-depth analysis to fully evaluate the cost impact to the State Group Health Insurance Program regarding the Statewide Provider and Health Plan Claim Dispute Resolution Program not being applicable to the State Group Health Insurance Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The effective date of this bill is October 1, 2016, which is in the middle or towards end of the plan year for individual health insurance plans and many group plans. It may be more appropriate for the provisions of sections 8 and 11 of this bill to apply to new plans and plan renewals starting after the effective date.

The bill provides that an insured is not liable for payment of fees to a nonparticipating provider for nonemergency services only if the services are provided in a facility contracted for nonemergency services and only if the insured "has no ability and opportunity to choose a participating provider at the facility." The manner in which that ability and opportunity is to be determined is not specified. It may be appropriate to place responsibility on the insurer and the contracted facility, rather than the consumer, for determining and ensuring that the providers treating the consumer at the contracted facility will be participating providers unless the consumer expressly selects a specific nonparticipating provider.[58]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.003, 395.301, 408.7057, 456.072, 458.331, 459.015, 626.9541, 627.6471, and 627.662.

This bill creates section 627.64194 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 Banking and Insurance on February 16, 2016:
The CS/CS:

- Excludes emergency transportation and ambulance services from the definition of "emergency services."
- Provides that a facility licensed under ch. 395, F.S., or an urgent care center is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.
- Revises the statewide provider and health claim dispute resolution program by creating an offer to settle as mechanism to resolve disputes.
- Expands the bases for violations of the balance billing prohibitions and payment requirements to include physicians licensed under ch. 458 or 459, F.S., and health insurers, but requires the conduct to be willful.

[58] Office of Insurance Regulation, *2016 Agency Legislative Bill Analysis* (Feb. 3, 2016) (on file with Senate Committee on Banking and Insurance).

- Applies provisions of the bill to group health insurance as well as individual health insurance.
- Provides technical, conforming changes.

CS by Health Policy on February 1, 2016:
The CS requires:

- Hospitals to post on its website a listing of its contractual relationships with insurers and health maintenance organizations (HMOs), practitioners and practice groups along with contact information and hyperlinks;
- Application of the current HMO reimbursement statute for out of network emergency services for preferred provider organization (PPO) and exclusive provider organization (EPO) patients;
- The parties to seek resolution through a court of competent jurisdiction or through the voluntary resolution dispute process for disputes over the reimbursement amount for emergency or nonemergency fees;
- Any issuer of health insurance products in this state for reduced rates of payment to make a list of preferred providers available on its website, with monthly updates; and
- Any issuer of health insurance products in this state for reduced rates of payment to provide additional warning and disclosure language regarding limited benefits and payment when nonparticipating providers are used beginning January 1, 2017.

The CS includes emergency transportation and ambulance services in the definition of emergency services.

B. Amendments:

None.

182608

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 79
and insert:
1. Services may be provided in the hospital by the facility as well as by other health care practitioners who may separately bill the patient;
2. Health care practitioners who provide services in the hospital may or may not participate with the same health insurers or health maintenance organizations as the hospital;

182608

and

3. Prospective patients should contact the health care practitioner who will provide services in the hospital to determine which health insurers and health maintenance organizations the practitioner participates in as a network provider or preferred provider.

(c) As applicable, the names, mailing addresses, and telephone numbers of the health care practitioners and medical practice groups with which it contracts to provide services in the hospital, and instructions on how to contact the practitioners and groups to determine which health insurers and health maintenance organizations they participate in as network providers or preferred providers.

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

And the title is amended as follows:

Delete lines 8 - 12

and insert:

post on its website certain information regarding health insurers, health maintenance organizations, health care practitioners, and practice groups that it contracts with, and a specified disclosure statement; amending s. 408.7057, F.S.;

765128

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 105 and 106
insert:

(3) The agency shall adopt rules to establish a process to be used by the resolution organization in considering claim disputes submitted by a provider or health plan which must include:

(a) That the resolution organization review and consider all documentation submitted by both the health plan and the

765128

provider;

(b) That the resolution organization's recommendation make findings of fact;

(c) That either party may request that the resolution organization conduct an evidentiary hearing in which both sides can present evidence and examine witnesses, and for which the cost of the hearing is equally shared by the parties;

(d) That the resolution organization may not communicate ex parte with either the health plan or the provider during the dispute resolution;

(e) That the resolution organization's written recommendation, including findings of fact relating to the calculation under s. 641.513(5) for the recommended amount due for the disputed claim, include any evidence relied upon; and

(f) That ~~the issuance by~~ the resolution organization issue ~~of~~ a written recommendation~~, supported by findings of fact,~~ to the agency within 60 days after the requested information is received by the resolution organization within the timeframes specified by the resolution organization. In no event shall the review time exceed 90 days following receipt of the initial claim dispute submission by the resolution organization.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 81 - 82

and insert:

section 408.7057, Florida Statutes, and subsections (3) and (4) of that section are amended, to read:

765128

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 15
and insert:
dispute resolution program; requiring the Agency for Health Care Administration to include in its rules additional requirements relating to a resolution organization's process in considering certain claim disputes; requiring a final order to

354450

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment

Delete lines 152 - 153
and insert:
(a) "Emergency services" means emergency services and care, as defined in s. 641.47(8), which are provided in a facility.

240662

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment

Delete lines 161 - 162
and insert:
(d) "Nonemergency services" means the services and care that are not emergency services.

457464

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Appropriations (Negron) recommended the following:

Senate Amendment

Delete lines 165 - 193
and insert:
is not an exclusive provider as defined in s. 627.6472.

1. For purposes of covered emergency services under this section, a facility licensed under chapter 395 or an urgent care center as defined in s. 395.002(30) is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.

457464

2. For purposes of covered nonemergency services under subsection (3), the term does not include an anesthesiologist as defined in s. 458.3475(1)(a) or s. 459.023(1)(a), an anesthesiologist assistant as defined in s. 458.3475(1)(b) or s. 459.023(1)(b), a certified registered nurse anesthetist as described in s. 464.012(4)(a), or a radiologist as defined in s. 468.301(16).

(f) "Participating provider" means, for purposes of this section, a preferred provider as defined in s. 627.6471 or an exclusive provider as defined in s. 627.6472.

(2) An insurer is solely liable for payment of fees to a nonparticipating provider of covered emergency services provided to an insured in accordance with the coverage terms of the health insurance policy, and such insured is not liable for payment of fees for covered services to a nonparticipating provider of emergency services, other than applicable copayments, coinsurance, and deductibles. An insurer must provide coverage for emergency services that:

(a) May not require prior authorization.

(b) Must be provided regardless of whether the services are furnished by a participating provider or a nonparticipating provider.

(c) May impose a coinsurance amount, copayment, or limitation of benefits requirement for a nonparticipating provider only if the same requirement applies to a participating provider.

The provisions of s. 627.638 apply to this subsection.

(3) An insurer is solely liable for payment of fees to a

457464

nonparticipating provider, except a provider described in subparagraph (1)(e)2., of covered nonemergency services

386262

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Appropriations (Grimsley and Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 146 and 147
insert:

Section 8. Subsection (11) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim because of insured ineligibility:

(a) At any time, if the health insurer verified the

386262

eligibility of an insured at the time of treatment and provided an authorization number.

(b) More than 1 year after the date of payment of the claim.

Between lines 277 and 278

insert:

Section 13. Subsection (10) of section 641.3155, Florida Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(10) A health maintenance organization may not retroactively deny a claim because of subscriber ineligibility:

(a) At any time, if the health maintenance organization verified the eligibility of a subscriber at the time of treatment and provided an authorization number.

(b) More than 1 year after the date of payment of the claim.

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

And the title is amended as follows:

Delete lines 2 - 42

and insert:

An act relating to health care services; amending s. 395.003, F.S.; requiring hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers to comply with certain provisions as a condition of licensure; amending s. 395.301, F.S.; requiring a hospital to post on its website certain information regarding its contracts with health insurers, health maintenance organizations, and health

care practitioners and practice groups and specified notice to patients and prospective patients; amending s. 408.7057, F.S.; providing requirements for settlement offers between certain providers and health plans in a specified dispute resolution program; requiring a final order to be subject to judicial review; amending ss. 456.072, 458.331, and 459.015, F.S.; providing additional acts that constitute grounds for denial of a license or disciplinary action, to which penalties apply; amending s. 626.9541, F.S.; specifying an additional unfair method of competition and unfair or deceptive act or practice; amending s. 627.6131, F.S.; prohibiting a health insurer from retroactively denying a claim under specified circumstances; creating s. 627.64194, F.S.; defining terms; providing that an insurer is solely liable for payment of certain fees to a nonparticipating provider; providing limitations and requirements for reimbursements by an insurer to a nonparticipating provider; providing that certain disputes relating to reimbursement of a nonparticipating provider shall be resolved in a court of competent jurisdiction or through a specified voluntary dispute resolution process; amending s. 627.6471, F.S.; requiring an insurer that issues a policy including coverage for the services of a preferred provider to post on its website certain information about participating providers and physicians; requiring that specified notice be


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included in policies issued after a specified date which provide coverage for the services of a preferred provider; amending s. 627.662, F.S.; providing applicability of provisions relating to coverage for services and payment collection limitations to group health insurance, blanket health insurance, and franchise health insurance; amending s. 641.3155, F.S.; prohibiting a health maintenance organization from retroactively denying a claim under specified circumstances; providing

By the Committees on Banking and Insurance; and Health Policy; and Senator Garcia

597-03666-16 20161442c2

A bill to be entitled

An act relating to out-of-network health insurance coverage; amending s. 395.003, F.S.; requiring hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers to comply with certain provisions as a condition of licensure; amending s. 395.301, F.S.; requiring a hospital to post on its website certain information regarding its contracts with health insurers, health maintenance organizations, and health care practitioners and practice groups and specified notice to patients and prospective patients; amending s. 408.7057, F.S.; providing requirements for settlement offers between certain providers and health plans in a specified dispute resolution program; requiring a final order to be subject to judicial review; amending ss. 456.072, 458.331, and 459.015, F.S.; providing additional acts that constitute grounds for denial of a license or disciplinary action, to which penalties apply; amending s. 626.9541, F.S.; specifying an additional unfair method of competition and unfair or deceptive act or practice; creating s. 627.64194, F.S.; defining terms; providing that an insurer is solely liable for payment of certain fees to a nonparticipating provider; providing limitations and requirements for reimbursements by an insurer to a nonparticipating provider; providing that certain disputes relating to reimbursement of a nonparticipating provider shall be resolved in a court of competent jurisdiction or through a specified voluntary dispute resolution process; amending s. 627.6471, F.S.; requiring an

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insurer that issues a policy including coverage for the services of a preferred provider to post on its website certain information about participating providers and physicians; requiring that specified notice be included in policies issued after a specified date which provide coverage for the services of a preferred provider; amending s. 627.662, F.S.; providing applicability of provisions relating to coverage for services and payment collection limitations to group health insurance, blanket health insurance, and franchise health insurance; providing effective dates.

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

Section 1. Paragraph (d) is added to subsection (5) of section 395.003, Florida Statutes, to read:

395.003 Licensure; denial, suspension, and revocation.—

(5)

(d) A hospital, an ambulatory surgical center, a specialty hospital, or an urgent care center shall comply with ss. 627.64194 and 641.513 as a condition of licensure.

Section 2. Subsection (13) is added to section 395.301, Florida Statutes, to read:

395.301 Itemized patient bill; form and content prescribed by the agency; patient admission status notification.—

(13) A hospital shall post on its website:

(a) The names and hyperlinks for direct access to the websites of all health insurers and health maintenance

organizations for which the hospital contracts as a network provider or participating provider.

(b) A statement that:

1. Services provided in the hospital by health care practitioners may not be included in the hospital's charges;

2. Health care practitioners who provide services in the hospital may or may not participate in the same health insurance plans as the hospital; and

3. Prospective patients should contact the health care practitioner arranging for the services to determine the health care plans in which the health care practitioner participates.

(c) As applicable, the names, mailing addresses, and telephone numbers of the health care practitioners and practice groups that the hospital has contracted with to provide services in the hospital and instructions on how to contact these health care practitioners and practice groups to determine the health insurers and health maintenance organizations for which the hospital contracts as a network provider or participating provider.

Section 3. Paragraph (h) is added to subsection (2) of section 408.7057, Florida Statutes, and subsection (4) of that section is amended, to read:

408.7057 Statewide provider and health plan claim dispute resolution program.—

(2)

(h) Either the contracted or noncontracted provider or the health plan may make an offer to settle the claim dispute when it submits a request for a claim dispute and supporting documentation. The offer to settle the claim dispute must state

its total amount, and the party to whom it is directed has 15 days to accept the offer once it is received. If the party receiving the offer does not accept the offer and the final order amount is more than 90 percent or less than 110 percent of the offer amount, the party receiving the offer must pay the final order amount to the offering party and is deemed a nonprevailing party for purposes of this section. The amount of an offer made by a contracted or noncontracted provider to settle an alleged underpayment by the health plan must be greater than 110 percent of the reimbursement amount the provider received. The amount of an offer made by a health plan to settle an alleged overpayment to the provider must be less than 90 percent of the alleged overpayment amount by the health plan. Both parties may agree to settle the disputed claim at any time, for any amount, regardless of whether an offer to settle was made or rejected.

(4) Within 30 days after receipt of the recommendation of the resolution organization, the agency shall adopt the recommendation as a final order. The final order is subject to judicial review pursuant to s. 120.68.

Section 4. Paragraph (oo) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(oo) Willfully failing to comply with s. 627.64194 or s. 641.513 with such frequency as to indicate a general business practice.

Section 5. Paragraph (tt) is added to subsection (1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(tt) Willfully failing to comply with s. 627.64194 or s. 641.513 with such frequency as to indicate a general business practice.

Section 6. Paragraph (vv) is added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(vv) Willfully failing to comply with s. 627.64194 or s. 641.513 with such frequency as to indicate a general business practice.

Section 7. Paragraph (gg) is added to subsection (1) of section 626.9541, Florida Statutes, to read:

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

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

(gg) *Out-of-network reimbursement.*—Willfully failing to comply with s. 627.64194 with such frequency as to indicate a general business practice.

Section 8. Section 627.64194, Florida Statutes, is created

to read:

627.64194 Coverage requirements for services provided by nonparticipating providers; payment collection limitations.—

(1) As used in this section, the term:

(a) "Emergency services" means the services and care to treat an emergency medical condition as defined in s. 641.47(8).

(b) "Facility" means a licensed facility as defined in s. 395.002(16) and an urgent care center as defined in s. 395.002(30).

(c) "Insured" means a person who is covered under an individual or group health insurance policy delivered or issued for delivery in this state by an insurer authorized to transact business in this state.

(d) "Nonemergency services" means the services and care to treat a condition other than an emergency medical condition.

(e) "Nonparticipating provider" means a provider who is not a preferred provider as defined in s. 627.6471 or a provider who is not an exclusive provider as defined in s. 627.6472. For purposes of covered emergency services under this section, a facility licensed under chapter 395 or an urgent care center defined in s. 395.002(30) is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.

(f) "Participating provider" means, for purposes of this section, a preferred provider as defined in s. 627.6471 or an exclusive provider as defined in s. 627.6472.

(2) An insurer is solely liable for payment of fees to a nonparticipating provider of covered emergency services provided to an insured in accordance with the coverage terms of the

health insurance policy, and such insured is not liable for payment of fees for covered services to a nonparticipating provider of emergency services, other than applicable copayments, coinsurance, and deductibles. An insurer must provide coverage for emergency services that:

(a) May not require prior authorization.

(b) Must be provided regardless of whether the services are furnished by a participating provider or a nonparticipating provider.

(c) May impose a coinsurance amount, copayment, or limitation of benefits requirement for a nonparticipating provider only if the same requirement applies to a participating provider.

The provisions of s. 627.638 apply to this subsection.

(3) An insurer is solely liable for payment of fees to a nonparticipating provider of covered nonemergency services provided to an insured in accordance with the coverage terms of the health insurance policy, and such insured is not liable for payment of fees to a nonparticipating provider, other than applicable copayments, coinsurance, and deductibles, for covered nonemergency services that are:

(a) Provided in a facility that has a contract for the nonemergency services with the insurer which the facility would be otherwise obligated to provide under contract with the insurer; and

(b) Provided when the insured does not have the ability and opportunity to choose a participating provider at the facility who is available to treat the insured.

The provisions of s. 627.638 apply to this subsection.

(4) An insurer must reimburse a nonparticipating provider of services under subsections (2) and (3) as specified in s. 641.513(5), reduced only by insured cost share responsibilities as specified in the health insurance policy, within the applicable timeframe provided in s. 627.6131.

(5) A nonparticipating provider of emergency services as provided in subsection (2) or a nonparticipating provider of nonemergency services as provided in subsection (3) may not be reimbursed an amount greater than the amount provided in subsection (4) and may not collect or attempt to collect from the insured, directly or indirectly, any excess amount, other than copayments, coinsurance, and deductibles. This section does not prohibit a nonparticipating provider from collecting or attempting to collect from the insured an amount due for the provision of noncovered services.

(6) Any dispute with regard to the reimbursement to the nonparticipating provider of emergency or nonemergency services as provided in subsection (4) shall be resolved in a court of competent jurisdiction or through the voluntary dispute resolution process in s. 408.7057.

Section 9. Subsection (2) of section 627.6471, Florida Statutes, is amended to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(2) Any insurer issuing a policy of health insurance in this state, which insurance includes coverage for the services of a preferred provider, must provide each policyholder and

certificateholder with a current list of preferred providers and must make the list available on its website. The list must include, when applicable and reported, a listing by specialty of the names, addresses, and telephone numbers of all participating providers, including facilities, and, in the case of physicians, must also include board certifications, languages spoken, and any affiliations with participating hospitals. Information posted on the insurer's website must be updated on at least a calendar-month basis with additions or terminations of providers from the insurer's network or reported changes in physicians' hospital affiliations ~~for public inspection during regular business hours at the principal office of the insurer within the state~~.

Section 10. Effective upon this act becoming a law, subsection (7) is added to section 627.6471, Florida Statutes, to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(7) Any policy issued under this section after January 1, 2017, must include the following disclosure: "WARNING: LIMITED BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED. You should be aware that when you elect to utilize the services of a nonparticipating provider for a covered nonemergency service, benefit payments to the provider are not based upon the amount the provider charges. The basis of the payment will be determined according to your policy's out-of-network reimbursement benefit. Nonparticipating providers may bill insureds for any difference in the amount. YOU MAY BE REQUIRED TO PAY MORE THAN THE COINSURANCE OR COPAYMENT AMOUNT.

Participating providers have agreed to accept discounted payments for services with no additional billing to you other than coinsurance, copayment, and deductible amounts. You may obtain further information about the providers who have contracted with your insurance plan by consulting your insurer's website or contacting your insurer or agent directly."

Section 11. Subsection (15) is added to section 627.662, Florida Statutes, to read:

627.662 Other provisions applicable.—The following provisions apply to group health insurance, blanket health insurance, and franchise health insurance:

(15) Section 627.64194, relating to coverage requirements for services provided by nonparticipating providers and payment collection limitations.

Section 12. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 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 Appropriations

BILL:	PCS/SB 1496 (664560)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senators Bradley and Gaetz
SUBJECT:	Transparency in Health Care
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1496 increases the transparency and availability of health care pricing and quality of service information. The Agency for Health Care Administration (AHCA) is required to contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures to facilitate price comparison of typical health care services provided in hospitals and ambulatory surgery centers (ASCs). Quality indicators for services at the facilities will also be made available to the consumer to facilitate health care decision making.

Under the bill, hospitals and ASCs are required to provide access to the searchable service bundles on their websites. Consumers will be presented with estimated average payment and estimated payment ranges for each service bundle, by facility, facilities within geographic boundaries, and nationally. A hospital or ASC must notify consumers of other health care providers that may bill separately from the facility, as well as information about the facility's financial assistance policies and collection procedures.

A hospital's or ASC's website must also provide hyperlinks to the websites of insurers and health maintenance organizations (HMOs) for which the facility is in-network or a preferred provider to enable an insured patient to research cost-sharing responsibilities for the service bundle. Insurers and HMOs are required to provide on their websites a method for policy holders to estimate their cost-sharing responsibilities by service bundle, based on the insured's policy

and known usage. These estimates must include both in-network and out-of-network providers. Insurers and HMOs are also required to provide hyperlinks on their website to the AHCA's performance outcome and financial data.

Consumers may request personalized good faith estimates of charges for non-emergency medical services from hospitals, ASCs, and health care practitioners relating to medical services provided in the hospital or ASC. The bill also requires home health agencies and home medical equipment providers to provide consumers with good-faith estimates of medical services and supplies. These good-faith estimates must be provided to the consumer within seven days after the request. Information must also be provided about the health care provider's financial assistance policies and collection procedures.

A patient may also request an itemized bill or statement from a hospital or ASC after discharge. The hospital or ASC must provide an itemized bill or statement within seven days that is specific, written in plain language, and identifies all services provided by the facility, as well as rates charged, amounts due, and the payment status. The itemized bill or statement must inform the patient to contact his or her insurer regarding the patient's share of costs. The facility must provide records to verify the bill or statement upon request.

The bill requires the consumer advocate in the Department of Financial Services (DFS) to receive and investigate complaints from insured and uninsured patients concerning billing practices. If, after investigating a complaint, the consumer advocate determines the billing practices and charges were unfair, the consumer advocate will report these findings to the AHCA and the Department of Health (DOH) for regulatory and disciplinary action. The bill provides for penalties for unconscionable prices. The consumer advocate is also authorized to mediate billing complaints and negotiate payment arrangements.

The bill requires health insurers and HMOs that participate in the state group health insurance plan or Medicaid managed care to submit claims data to the vendor selected by the AHCA.

The AHCA estimates the bill will have a negative recurring fiscal impact of approximately $2.7 million in general revenue. Estimates of the fiscal impact of the new duties of the consumer advocate within the DFS are not available at this time. See Section V.

The bill has an effective date of July 1, 2016, except as otherwise provided in the bill.

II. Present Situation:

Health Care Price and Quality Transparency

In general, the term "transparency," when applied to health care, refers to the ability of a patient or the public to investigate and compare different health care providers for pricing and quality of care for one or more procedures. Although simple sounding, health care price transparency is difficult to implement due to legal challenges, the various manners in which health care is provided, and the various manners in which health care costs are paid. Demonstrating this

difficulty, the Health Care Incentives Improvement Institute gave an F grade to 45 out of 50 states, including Florida, in its 2015 Report Card on State Price Transparency Laws.[1, 2]

Some difficulties in implementing health care price transparency include:

- Legal barriers, including the confidentiality of some contractual information between health care providers and insurers, as well and health insurer trade secret information;[3]
- Difficulty in determining who will be providing care and whether or not all providers are in a patient's insurance network;[4]
- General confusion over billing practices;[5] and
- Difficulty drawing comparisons between patients' particular situations.[6]

Common Definitions in Health Care Pricing

Another basic difficulty in interpreting health care pricing is understanding the definition of many terms. Some common definitions include:

- "Charge," which means the dollar amount a provider charges for services rendered, before any contracted discounts are applied; a charge can be different from the amount paid;
- "Cost," the definition of which varies by the party incurring the expense:
  - To the patient, cost is the amount payable out of pocket for health care services;
  - To the provider, cost is the expense (direct and indirect) incurred to deliver health care services to patients;
  - To the insurer, cost is the amount payable to the provider (or reimbursable to the patient) for services rendered;
  - To the employer, cost is the expense related to providing health benefits (premiums or claims paid);
- "Price," which means the total amount a provider expects to be paid by payers and/or patients for health care services; and
- "Out-of-pocket payment," which means the portion of total payment for medical services and treatment for which the patient is responsible, including copayments, coinsurance, and deductibles.[7]

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[1] Health Care Incentives Improvement Institute, *Report Card on State Price Transparency Laws*, (July 2015), *available at* http://www.hci3.org/wp-content/uploads/files/files/2015_Report_PriceTransLaws_06.pdf (last visited on Jan. 14, 2016).
[2] Only one state, New Hampshire, received an A rating. Colorado and Maine received B's, and Vermont and Virginia received C's.
[3] Id.
[4] Anne Weiss and Susan Dentzer, *Three Key Lessons from the Health Care Transparency Summit*, Robert Wood Foundation, (April 16, 2015) http://www.rwjf.org/en/culture-of-health/2015/04/3_key_lessons_fromt.html?cid=xrs_rss-pr (last visited on Jan. 14, 2016).
[5] Many hospital bills, and bills issued by other health care facilities, consist of billing codes and names of procedures or medications which may not be easily understood by a layperson. Additionally, it may be difficult to determine whether charges on the bill have been paid, need to be paid, or will be paid by a third party such as a health insurer.
[6] For example, an older patient may be more fragile and require more recovery time and caution when administering a procedure and, therefore, may be charged more than a younger patient for the same procedure. Additionally, actual payment amounts to the health care provider may differ from patient to patient depending on whether that patient has insurance and the magnitude of any discounts that the insurer has negotiated with that health care provider.
[7] Health care Financial Management Association Price Transparency Taskforce, *Price Transparency in Health Care*, p.2 (2014) (on file with the Senate Committee on Health Policy).

Current Florida Requirements for Health Care Price and Quality Transparency

Current Florida law establishes multiple requirements regarding health care cost and quality transparency. Examples of such requirements include:

- Florida's Patient's Bill of Rights and Responsibilities,[8] which establishes the right of patients to, among other rights, be given information of known financial resources for the patient's health care, a reasonable estimate of charges before a procedure, and an itemized bill;
- The requirement for hospitals and ambulatory surgery centers (ASCs) to provide patients and their physicians with itemized bills upon request;[9]
- The requirement for pharmacies, health insurers, and health maintenance organizations (HMOs) to inform customers of the availability of the Agency for Health Care Administration's (AHCA's) quality and cost information;[10] and
- The requirement for HMOs to disclose financial data to customers and provide customers with estimated costs for services.[11]

The Florida Center for Health Information and Policy Analysis

Section 408.05, F.S., establishes the Florida Center for Health Information and Policy Analysis (Florida Center). The Florida Center is required to establish a comprehensive health information system to provide for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of collected and extant health-related data. The Florida Center is responsible for:

- Collecting adverse incident reports from hospitals, ASCs, HMOs, nursing homes, and assisted living facilities (ALFs);
- Collecting discharge data from licensed hospitals, ASCs, emergency departments, cardiac catheterization laboratories, and lithotripsy;
- Administering patient injury reporting, tracking, trending, and problem resolution programs for hospitals, ASCs, nursing homes, ALFs, and some HMOs
- Processing patient data requests and providing technical assistance; and
- Administering www.FloridaHealthFinder.gov, Florida's state-run website which provides easy access to health care information through health care quality comparison tools, a health encyclopedia, and other resources. The public may access the website to learn about medical conditions, compare health care facilities and providers, and find health care resources. The website also allows users to compare price ranges for some commonly offered health care services between health care providers.[12, 13]

[8] Section 381.026, F.S.
[9] Section 395.301, F.S.
[10] Sections 465.0244, 627.54, and 641.54, F.S
[11] Section 641.54, F.S.
[12] See *Florida Center for Health Information and Policy Analysis*, http://www.ahca.myflorida.com/schs/index.shtml (last visited on Jan. 14, 2016) and the Florida Health Finder FAQ, http://www.floridahealthfinder.gov/media/training-video.aspx (last visited on Jan. 14, 2016)
[13] Quality and price data is available on the website and searchable for approximately 150 conditions. Email from Orlando Pryor, AHCA Legislative Affairs Office (Jan. 15, 2016) (on file with the Senate Committee on Health Policy).

The Florida Commission on Health care and Hospital Funding

On May 5, 2015, Governor Rick Scott signed Executive Order 15-99 that established the Commission on Health care and Hospital Funding (commission).[14] The commission was created to investigate and advise on the role of taxpayer funding for hospitals, insurers, and health care providers, and the affordability, access, and quality of health care services they provide. The commission has met 15 times between May 20, 2015 and January 19, 2016, and will continue meeting. The commission has heard testimony and collected data from numerous sources, including physicians, hospitals, state agencies, health maintenance organizations, and the public, but it has not yet published conclusions or final recommendations. On November 19, 2015, the commission endorsed proposed bill language from Governor Scott to address the issue of health care price and quality transparency.[15, 16] Many of the concepts inherent to the Governor's proposal are addressed in SB 1496.

III. Effect of Proposed Changes:

Section 1 amends the licensure requirements for hospitals and ambulatory surgical centers (ASCs) in s. 395.301, F.S., to require that such facilities meet new standards for providing financial information and quality of service measures to patients and the public.[17]

General Requirements for the Provision of Information to the Public

The bill requires each hospital and ASC to:

- Provide timely and accurate financial information and quality of service measures to prospective patients, actual patients, and patient's legal guardians or survivors;
- Provide information on payments made to that facility via the facility's website, under the following parameters:
  - The posted information must be presented and searchable in accordance with, and through a hyperlink to, the system and service bundles established by the Agency for Health Care Administration (AHCA).
  - The minimum information that must be provided by the facility for each service bundle includes:
    - The estimated average payment received from all payers except Medicaid and Medicare; and
    - The estimated payment range.
  - The facility must state in plain language that the information provided is an estimate of costs and that actual costs will be based on services actually provided.

[14] Executive order 15-99, *available at* http://www.flgov.com/wp-content/uploads/orders/2015/EO_15-99.pdf, (last visited on Jan. 15, 2016).
[15] Letter from the Commission on Health care and Hospital Funding to Senate President Andy Gardiner and Speaker of the House of Representatives Steve Crisafulli (November 19, 2015) (on file with the Senate Committee on Health Policy).
[16] Governor's Recommended Bill, *Health Care Transparency*, available at http://www.healthandhospitalcommission.com/docs/Health careTransparencyProposal.pdf (last visited on Jan. 15, 2016).
[17] Note: Some of the effects detailed in the analysis of section 1 of the bill are requirements that are in current law and which are either kept intact or revised and restated. Due to the significant reorganization of s. 395.301, F.S., the total effects of all new, current law, and revised requirements are included in this analysis as effects of the bill.

  - The facility must assist the consumer in accessing his or her health insurer's or HMO's website for information on estimated copayments, deductibles, and other cost-sharing responsibilities;
- Post information on its website, including:
  - The names of all health insurers and HMOs for which the facility is a network provider or a preferred provider, along with links to the respective websites;
  - Information for uninsured or out-of-network patients on:
    - The facility's financial assistance policy including the application process, payment plans, and discounts; and
    - The facility's collection procedures and charity care policies;
  - A notification to patients and prospective patients that services may be provided in the facility by the facility and by other health care providers who may bill separately;
  - Notification that patients and prospective patients may request a personalized estimate of charges from the facility; and
  - A link to health-related data, including quality measures and statistics that are disseminated by the AHCA; and
- Take action to notify the public that health-related data is electronically available to the public and provide a link to the AHCA's website.

Requirements to Respond to Specific Requests for Information

Upon specific request, the bill requires each facility to provide:
- A written, good-faith estimate of reasonably anticipated facility charges for the non-emergency treatment of the requestor's specific condition, under the following parameters:
  - The estimate must be provided within seven business days after the receipt of the request;
  - The facility is not required to adjust the estimate to account for any insurance coverage;
  - The estimate may be based on the service bundles created by the AHCA unless the patient requests a more specific estimate;
  - The facility must inform the patient that he or she may contact his or her health insurer or HMO for additional information on cost-sharing responsibilities;
  - The estimate must provide information on the facility's financial assistance policy, including the application process, payment plans, and discounts;
  - The estimate must provide information on the facility's charity care policy and collection procedures;
  - Upon request, the facility must notify the requestor of any revision to the estimate;
  - The estimate must contain a notice that services may be provided by other health care providers who may bill separately;
  - The facility must take action to notify the public that such estimates are available;
  - The facility will be fined $500 for each instance of failing to timely provide a requested estimate; and
  - The provision of the estimate does not preclude the charges from exceeding the estimate;
- An itemized bill or statement to the patient, or the patient's survivor or legal guardian, under the following parameters:
  - The initial itemized statement or bill:
    - Must be provided within seven days of the patient's discharge or the patient's request;
    - Must detail the specific nature of charges or expenses in plain language, comprehensible to an ordinary layperson;

- Must contain a statement of specific services received and expenses incurred by date;
- Must enumerate in detail, as prescribed by the AHCA, the constituent components of the services received within each department of the facility;
- Must include unit price data on rates charged by the facility;
- Must identify each item as paid, pending payment by a third party, or pending payment by the patient;
- Must include the amount due, if applicable;
- Must advise the patient or the patient's legal survivor or guardian to contact the patient's health insurer or HMO regarding the patient's cost-sharing responsibilities;
- Must include a notice of hospital-based physicians and other health care providers who bill separately;
- May not include any generalized category of expenses;
- Must list drugs by brand or generic name;
- Must identify the date, type, and length of treatment for any physical, occupational, or speech therapy provided; and
- Must prominently display the telephone number of the medical facility's patient liaison;

o Any subsequent bill must contain all of the information required in the initial bill with any revisions clearly delineated;
o A facility must make available at no charge, except copying fees, both in the facility's office and electronically, all records necessary for the verification of the accuracy of the invoice or bill within 10 business days after a request for such records and before payment of the statement or bill; and
o Each facility must establish a method of responding to a patient's question about his or her itemized bill within seven business days after the question is received.

If the patient is not satisfied with the facility's response to a question, the facility must provide the patient with the address and contract information for the consumer advocate as provided in s. 627.0613, F.S.

Miscellaneous Provisions

The bill deletes statutory language:
- Stating that any person who receives an itemized statement is fully and accurately informed as to each charge and service provided by the institution preparing the statement;
- Requiring an itemized statement to contain a disclosure identifying the ownership status, either for-profit or not-for-profit, of the facility preparing the statement;
- Requiring an itemized bill to be provided to the patient's physician at no charge;
- Restricting physicians, dentists, podiatrists, and other licensed facilities from adding to the price charged by a third party except for a service or handling charge which represents a cost actually incurred.

The bill also makes other technical and conforming changes.

Section 2 creates s. 395.3012, F.S., to allow the AHCA to impose fines based on the findings of the consumer advocate's investigation of billing complaints pursuant to s. 627.0613(6), F.S. The

bill sets the fines for noncompliance at the greater of $2,500 per violation or double the amount of the original charges.

Sections 3 and 4 amend ss. 400.487 and 400.934, F.S., respectively, to require home health agencies and home medical equipment providers to, upon request, provide a written, good-faith estimate of reasonably anticipated charges for services provided by that health care provider within seven business days after receiving a request and to provide information disclosing payment plans, discounts, other available assistance, and collection procedures. Additionally, home health agencies and home medical equipment providers must inform the requestor that he or she may contact his or her health insurer or HMO for additional information concerning cost sharing responsibilities.

Section 5 amends s. 408.05, F.S., to replace the Florida Center for Health Information and Policy Analysis with the Florida Center for Health Information and Transparency (center), to be housed within the AHCA. The center's responsibilities are streamlined and updated to reflect current data needs. The center is tasked with collecting, compiling, coordinating, analyzing, indexing, and disseminating health-related data and statistics. The center and the AHCA must meet numerous requirements, as described below.[18]

Health Related Data

The bill:

- Requires that the center be staffed as necessary to carry out its functions;
- Requires that the center maintain data sets in existence before July 1, 2016, unless such data are duplicated and readily available from other credible sources;
- Requires that the center collect data on:
  - Health resources, including licensed health care practitioners by specialty and type of practice and including data collected by the Department of Health (DOH) pursuant to ss. 458.3191 and 456.0081, F.S.;
  - Health service inventories, including acute care, long-term care, and other institutional care facilities and specific services provided by hospitals, nursing homes, home health agencies, and other licensed health care facilities;
  - Service utilization for licensed health care facilities;
  - Health care costs and financing;
  - The extent of public and private health insurance coverage in Florida; and
  - Specific quality-of-care initiatives involving various health care providers when extant data is not adequate to achieve the objectives of the initiatives;
- Eliminates the requirement that the center collect data on:
  - The extent and nature of illness and disability of the state population;
  - The impact of illness and disability of the state population on the state economy;
  - Environmental, social, and other health hazards;
  - Health knowledge and practices of the people in Florida; and
  - Family formation, growth, and dissolution.

[18] As similarly noted in Section 1, due to significant revision and organizational changes in this section, the total effects of all new, revised, and current law requirements are included in this analysis as effects of the bill.

Health Information Transparency

The bill:

- Requires the AHCA to:
  - Contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures and allows for price comparison, and the platform must allow a consumer to search by condition or service bundle that is comprehensible to an ordinary layperson and may not require registration, password, or user identification;
  - Collect and compile information on and coordinate the activities of state agencies involved in providing health information to consumers;
  - Promote data sharing by making state-collected data available, transferable, and readily usable;
  - Develop written agreements with local, state, and federal agencies to facilitate the sharing of data related to health care;
  - Establish by rule the types of data collected, complied, processed, used, or shared;
  - Consult with contracted vendors, the State Consumer Health Information and Policy Advisory Council, and other public and private users regarding the types of data that should be collected and the use of such data;
  - Monitor data collection procedures and test data quality to facilitate the dissemination of data that are accurate, valid, reliable, and complete;
  - Develop methods for archiving data, retrieving archived data, and editing data, and verifying data;
  - Make available health care quality measures that will allow consumers to compare outcomes and other performance measures for health care services; and
  - Make available the results of special health surveys, health care research, and health care evaluations conducted or supported by under s. 408.05, F.S.;
- Restricts the AHCA from establishing an all-payer claims database without express legislative authority;
- Eliminates requirements, except as detailed above, for the AHCA and the center to:
  - Review the statistical activities of state agencies to ensure they are consistent with the comprehensive health information system;
  - Establish minimum health-care-related data sets;
  - Establish advisory standards for the quality of health statistical and epidemiological data collection;
  - Prescribe standards for the publication of health-care-related data;
  - Establish a long-range plan for making health care quality measures and financial data available;
  - Provide technical assistance to persons or organizations engaged in health planning activities;
  - Administer, manage, and monitor grants related to health information services; and
  - Aid in the dissemination of data through the publication of reports, including an annual report, and conducting special studies and surveys.

The vendor must:

- Be a non-profit research institute that is qualified under s. 1874 of the federal Social Security Act to receive Medicare claims data and which receives claims data from multiple private insurers nationwide;
- Have a national database consisting of at least 15 billion claim lines of administrative claims data from multiple payers capable of being expanded by adding third-party payers, including employers with Employee Retirement Income Security Act of 1974 (ERISA) plans;
- Have a well-developed methodology for analyzing claims data within defined service bundles; and
- Have a bundling methodology that is available in the public domain to allow for consistency and comparison of state and national benchmarks with local regions and specific providers.

Section 6 amends s. 408.061, F.S., to:
- Require that the AHCA mandate the submission of data from health care facilities, health care providers, and health insurers in order to facilitate transparency in health care pricing and quality measures;
- Provide that data submitted by health care providers may include actual charges to patients as specified by rule; and
- Provide that data submitted by health insurers may include payments to health care facilities and health care providers as specified by rule.

Section 7 amends s. 456.0575, F.S., to require that every licensed health care practitioner must provide, upon request by a patient, a good-faith estimate of reasonably anticipated charges for any non-emergency services to treat the patient's condition at a hospital or ASC. This estimate must be provided within seven business days after receiving the request and before providing the service for which the request for an estimate was made. The practitioner must inform the patient that he or she may contact his or her health insurer or HMO for additional information concerning cost-sharing responsibilities. The practitioner must also provide information to uninsured or out of network patients on the practitioner's financial assistance policy, including the application process, payment plans, discounts, and other available assistance, the practitioner's charity care policy, and the practitioner's collection procedures.

The bill provides that such an estimate does not preclude the actual charges from exceeding the estimate and that failure to provide a requested estimate in accordance with the provisions stated and without good cause will result in disciplinary action and a fine of $500 for each instance of failure to provide the requested estimate.

Section 8 amends s. 456.072, F.S., to include the failure to comply with fair billing practices pursuant to s. 627.0613, F.S., in the list of grounds for which disciplinary actions may be taken against a health care practitioner.

Section 9 amends s. 627.0613, F.S., to expand the duties of the consumer advocate.[19] The bill requires that:

[19] The consumer advocate is appointed by, and reports to, the Chief Financial Officer and is tasked with representing the general public before various state agencies.

- The consumer advocate must report to the AHCA and the DOH the findings resulting from investigation of unresolved complaints concerning the billing practices of any hospital, ASC, or health care practitioner licensed under ch. 456, F.S.;
- The AHCA and the DOH must grant the consumer advocate access to any files, records, and data which are necessary for such investigations;
- The consumer advocate must provide mediation between providers and patients to resolve billing complaints and negotiate arrangements for extended payment schedules; and
- The consumer advocate must maintain a process for receiving and investigating complaints concerning billing practices by hospitals, ASCs, and health care practitioners licensed under ch. 456, F.S.

Under the bill, such investigations by the consumer advocate are limited to determining compliance with the following:

- The patient was informed before a non-emergency procedure of the expected payments related to the procedure, the contact information for health insurers or HMOs, and the expected involvement of other providers who may bill separately;
- The patient was informed of policies and procedures to qualify for discounts;
- The patient was informed of collection procedures and given the opportunity to participate in an extended payment schedule;
- The patient was given a written, personal, and itemized estimate as required in s. 395.301, F.S., for facilities and s. 456.0575, F.S., for health care practitioners for services in a facility;
- The statement or bill delivered to the patient was accurate and included all required information; and
- The billed amounts were fair charges, defined as "the common and frequent range of charges for patients who are similarly situated requiring the same or similar medical services."

Section 10 creates s. 627.6385, F.S., to require each health insurer to:

- Make available on its website a method for policyholders to estimate their cost-sharing responsibilities for health care services and procedures based on the service bundles established in s. 408.05(3)(c), F.S., or based on a personalized estimate, and a link to the health and quality information disseminated by the AHCA;
- Include in every policy delivered or issued to a person in Florida a notice that the information required by this section is available electronically and the address of the website where the information can be accessed; and
- If the health insurer participates in the state group health insurance plan or Medicaid managed care, provide all claims data to the fullest extent possible to the contracted vendor selected by the AHCA under s. 408.05(3)(c), F.S.

Section 11 amends s. 641.54, F.S., to require each HMO to:

- Make available electronically or by request the estimated amount of any cost-sharing responsibilities for any covered services described by the service bundles established pursuant to s. 408.05(3)(c), F.S., or as described in a personalized estimate received from a health care facility or health care practitioner;
- If the HMO participates in the state group health insurance plan or Medicaid managed care, provide all claims data to the fullest extent possible to the contracted vendor selected by the AHCA under s. 408.05(3)(c), F.S.; and

- Create a link on its website to the health information disseminated by the AHCA.

Section 12 amends s. 409.967, F.S., to require that Medicaid managed care plans provide all claims data to the fullest extent possible to the contracted vendor selected by the AHCA under s. 408.05(3)(c), F.S.

Section 13 amends s. 110.123, F.S., to require that the Department of Management Services make arrangements to provide claims data of the state group health insurance plan to the contracted vendor selected by the AHCA pursuant to s. 408.05(3)(c), F.S. The bill also requires that each health plan awarded a contract in state group health insurance must provide claims data to the selected vendor.

Sections 14 through 20 amend various sections of law to make technical and conforming changes.

Section 21 provides that the bill takes effect on July 1, 2016.

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:

PCS/SB 1496 may have a positive fiscal impact on consumers of health care services to the extent the transparency measures allow consumers to make better informed choices on where to obtain their health care services based on price and quality, take advantage of discounts or other financial assistance, or negotiate with health care service providers on the specific costs of services.

The bill may have a negative fiscal impact on providers of health care services, health insurers, and HMOs related to posting health care information on their webpages or providing patient-specific estimates.

C. Government Sector Impact:

The AHCA estimates that the bill will have recurring costs to the agency of approximately $2.7 million per year, all of which is general revenue. Contracted services account for approximately $2.5 to $2.6 million of the annual costs. Approximately $133,000 of the annual costs are for two full-time-equivalent positions. Additional recurring costs include approximately $12,000 per year for expenses and less than $1,000 per year for human resource services. The AHCA also estimates non-recurring costs for Fiscal Year 2016-2017 of $9,054.[20]

An estimate of the fiscal impact of the new duties of the office of the consumer advocate within the Department of Financial Services (DFS) is not yet available, but an estimate has been requested of the DFS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.301, 400.487, 400.934, 408.05, 408.061, 456.0575, 456.072, 627.0613, 641.54, 409.967, 110.123, 20.42, 381.026, 395.602, 395.6025, 408.07, 408.18, and 465.0244.

This bill creates the following sections of the Florida Statutes: 395.3012 and 627.6385.

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 January 28, 2016:
The committee substitute:

- Requires a licensed hospital or ambulatory surgery center to make certain information available on its website that must be presented and searchable in accordance with, and through a hyperlink to, the system established by the Agency for Health Care Administration and its vendor under the bill, while the underlying bill did not require the hyperlink;
- Deletes from the bill requirements for nursing homes to provide specified information upon request;

[20] Fiscal analysis provided by the AHCA on January 19, 2016. On file with Senate Health Policy staff.

- Deletes from the bill provisions entitling health insurers and health maintenance organizations to tax credits under certain conditions; and
- Deletes from the bill provisions establishing a tax credit of $50 per employee per data submission, up to $500,000, which could be used against either Florida's sales and use tax or corporate income tax for employers with plans covered by the Employee Retirement Income Security Act of 1974, under certain conditions.

B. Amendments:

None.

523828

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 395.301, Florida Statutes, is amended to read:

395.301 Price transparency; itemized patient statement or bill; ~~form and content prescribed by the agency;~~ patient admission status notification.—

(1) A facility licensed under this chapter shall provide


523828

timely and accurate financial information and quality of service measures to prospective and actual patients of the facility, or to patients' survivors or legal guardians, as appropriate. Such information shall be provided in accordance with this section and rules adopted by the agency pursuant to this chapter and s. 408.05. Licensed facilities operating exclusively as state facilities are exempt from this subsection.

(a) Each licensed facility shall make available to the public on its website information on payments made to that facility for defined bundles of services and procedures. The payment data must be presented and searchable in accordance with, and through a hyperlink to, the system established by the agency and its vendor using the descriptive service bundles developed under s. 408.05(3)(c). At a minimum, the facility shall provide the estimated average payment received from all payors, excluding Medicaid and Medicare, for the descriptive service bundles available at that facility and the estimated payment range for such bundles. Using plain language, comprehensible to an ordinary layperson, the facility must disclose that the information on average payments and the payment ranges is an estimate of costs that may be incurred by the patient or prospective patient and that actual costs will be based on the services actually provided to the patient. The facility shall also assist the consumer in accessing his or her health insurer's or health maintenance organization's website for information on estimated copayments, deductibles, and other cost-sharing responsibilities. The facility's website must:

1. Identify and post the names and hyperlinks for direct access to the websites of all health insurers and health

523828

maintenance organizations for which the facility is a network provider or preferred provider.

2. Provide information to uninsured patients and insured patients whose health insurer or health maintenance organization does not include the facility as a network provider or preferred provider on the facility's financial assistance policy, including the application process, payment plans, and discounts, and the facility's charity care policy and collection procedures.

3. If applicable, notify patients and prospective patients that services may be provided in the health care facility by the facility as well as by other health care providers who may separately bill the patient and that such health care providers may or may not participate with the same health insurers or health maintenance organizations as the facility does.

4. Inform patients and prospective patients that they may request from the facility and other health care providers a more personalized estimate of charges and other information, and inform patients that they should contact each health care practitioner who will provide services in the hospital to determine with which health insurers and health maintenance organizations he or she participates as a network provider or preferred provider.

5. Provide the names, mailing addresses, and telephone numbers of the health care practitioners and medical practice groups with which it contracts to provide services in the facility and instructions on how to contact the practitioners and groups to determine the health insurers and health maintenance organizations with which they participate as a

523828

network provider or preferred provider.

(b)1. Upon request, and before providing any nonemergency medical services, each licensed facility shall provide a written, good faith estimate of reasonably anticipated charges by the facility for the treatment of the patient's or prospective patient's specific condition. The facility must provide the estimate in writing to the patient or prospective patient within 7 business days after the receipt of the request and is not required to adjust the estimate for any potential insurance coverage. The estimate may be based on the descriptive service bundles developed by the agency under s. 408.05(3)(c) unless the patient or prospective patient requests a more personalized and specific estimate that accounts for the specific condition and characteristics of the patient or prospective patient. The facility shall inform the patient or prospective patient that he or she may contact his or her health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities.

2. In the estimate, the facility shall provide to the patient or prospective patient information on the facility's financial assistance policy, including the application process, payment plans, and discounts and the facility's charity care policy and collection procedures.

3. The estimate shall clearly identify any facility fees and, if applicable, include a statement notifying the patient or prospective patient that a facility fee is included in the estimate, the purpose of the fee, and that the patient may pay less for the procedure or service at another facility or in another health care setting.

523828

4. Upon request, the facility shall notify the patient or prospective patient of any revision to the estimate.

5. In the estimate, the facility must notify the patient or prospective patient that services may be provided in the health care facility by the facility as well as by other health care providers that may separately bill the patient, if applicable.

6. The facility shall take action to educate the public that such estimates are available upon request.

7. Failure to timely provide the estimate pursuant to this paragraph shall result in a daily fine of $1,000 until the estimate is provided to the patient or prospective patient. The total fine may not exceed $10,000.

The provision of an estimate does not preclude the actual charges from exceeding the estimate.

(c) Each facility shall make available on its website a hyperlink to the health-related data, including quality measures and statistics that are disseminated by the agency pursuant to s. 408.05. The facility shall also take action to notify the public that such information is electronically available and provide a hyperlink to the agency's website.

(d)1. Upon request, and after the patient's discharge or release from a facility, the facility must provide ~~A licensed facility not operated by the state shall notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. Within 7 days following the patient's discharge or release from a licensed facility not operated by the state, the licensed facility providing the service shall, upon request, submit~~ to the patient~~,~~ or to the

patient's survivor or legal guardian, as ~~may be~~ appropriate, an itemized statement or bill detailing in plain language, comprehensible to an ordinary layperson, the specific nature of charges or expenses incurred by the patient.~~, which in~~ The initial statement or bill ~~billing~~ shall be provided within 7 days after the patient's discharge or release or after a request for such statement or bill, whichever is later. The initial statement or bill must contain a statement of specific services received and expenses incurred by date and provider for such items of service, enumerating in detail as prescribed by the agency the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility~~, as prescribed by the agency~~. The statement or bill must also clearly identify any facility fee and explain the purpose of the fee. The statement or bill must identify each item as paid, pending payment by a third party, or pending payment by the patient and must include the amount due, if applicable. If an amount is due from the patient, a due date must be included. The initial statement or bill must direct the patient or the patient's survivor or legal guardian, as appropriate, to contact the patient's insurer or health maintenance organization regarding the patient's cost-sharing responsibilities.

2. Any subsequent statement or bill provided to a patient or to the patient's survivor or legal guardian, as appropriate, relating to the episode of care must include all of the information required by subparagraph 1., with any revisions clearly delineated.

3.~~(2)(a)~~ Each ~~such~~ statement or bill provided ~~submitted~~

523828

pursuant to this subsection ~~section~~:

a.~~1.~~ Must ~~May not~~ include notice ~~charges~~ of hospital-based physicians and other health care providers who bill ~~if billed~~ separately.

b.~~2.~~ May not include any generalized category of expenses such as "other" or "miscellaneous" or similar categories.

c.~~3.~~ Must ~~Shall~~ list drugs by brand or generic name and not refer to drug code numbers when referring to drugs of any sort.

d.~~4.~~ Must ~~Shall~~ specifically identify physical, occupational, or speech therapy treatment by ~~as to the~~ date, type, and length of treatment when such ~~therapy~~ treatment is a part of the statement or bill.

~~(b) Any person receiving a statement pursuant to this section shall be fully and accurately informed as to each charge and service provided by the institution preparing the statement.~~

(2)~~(3)~~ ~~On each itemized statement submitted pursuant to subsection (1) there shall appear the words "A FOR-PROFIT (or NOT-FOR-PROFIT or PUBLIC) HOSPITAL (or AMBULATORY SURGICAL CENTER) LICENSED BY THE STATE OF FLORIDA" or substantially similar words sufficient to identify clearly and plainly the ownership status of the licensed facility.~~ Each itemized statement or bill must prominently display the telephone ~~phone~~ number of the medical facility's patient liaison who is responsible for expediting the resolution of any billing dispute between the patient, or the patient's survivor or legal guardian ~~his or her representative~~, and the billing department.

~~(4) An itemized bill shall be provided once to the patient's physician at the physician's request, at no charge.~~

~~(5) In any billing for services subsequent to the initial~~

523828

~~billing for such services, the patient, or the patient's survivor or legal guardian, may elect, at his or her option, to receive a copy of the detailed statement of specific services received and expenses incurred for each such item of service as provided in subsection (1).~~

~~(6) No physician, dentist, podiatric physician, or licensed facility may add to the price charged by any third party except for a service or handling charge representing a cost actually incurred as an item of expense; however, the physician, dentist, podiatric physician, or licensed facility is entitled to fair compensation for all professional services rendered. The amount of the service or handling charge, if any, shall be set forth clearly in the bill to the patient.~~

~~(7) Each licensed facility not operated by the state shall provide, prior to provision of any nonemergency medical services, a written good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition upon written request of a prospective patient. The estimate shall be provided to the prospective patient within 7 business days after the receipt of the request. The estimate may be the average charges for that diagnosis related group or the average charges for that procedure. Upon request, the facility shall notify the patient of any revision to the good faith estimate. Such estimate shall not preclude the actual charges from exceeding the estimate. The facility shall place a notice in the reception area that such information is available. Failure to provide the estimate within the provisions established pursuant to this section shall result in a fine of $500 for each instance of the facility's failure to provide the~~

523828

~~requested information.~~

~~(8) Each licensed facility that is not operated by the state shall provide any uninsured person seeking planned nonemergency elective admission a written good faith estimate of reasonably anticipated charges for the facility to treat such person. The estimate must be provided to the uninsured person within 7 business days after the person notifies the facility and the facility confirms that the person is uninsured. The estimate may be the average charges for that diagnosis-related group or the average charges for that procedure. Upon request, the facility shall notify the person of any revision to the good faith estimate. Such estimate does not preclude the actual charges from exceeding the estimate. The facility shall also provide to the uninsured person a copy of any facility discount and charity care discount policies for which the uninsured person may be eligible. The facility shall place a notice in the reception area where such information is available. Failure to provide the estimate as required by this subsection shall result in a fine of $500 for each instance of the facility's failure to provide the requested information.~~

(3) ~~(9)~~ If a licensed facility places a patient on observation status rather than inpatient status, observation services shall be documented in the patient's discharge papers. The patient or the patient's survivor or legal guardian ~~proxy~~ shall be notified of observation services through discharge papers, which may also include brochures, signage, or other forms of communication for this purpose.

(4) ~~(10)~~ A licensed facility shall make available to a patient all records necessary for verification of the accuracy

523828

of the patient's statement or bill within 10 ~~30~~ business days after the request for such records. The records ~~verification information~~ must be made available in the facility's offices and through electronic means that comply with the Health Insurance Portability and Accountability Act of 1996. Such records must ~~shall~~ be available to the patient before ~~prior to~~ and after payment of the statement or bill ~~or claim~~. The facility may not charge the patient for making such verification records available; however, the facility may charge its usual fee for providing copies of records as specified in s. 395.3025.

(5) ~~(11)~~ Each facility shall establish a method for reviewing and responding to questions from patients concerning the patient's itemized statement or bill. Such response shall be provided within 7 business ~~30~~ days after the date a question is received. If the patient is not satisfied with the response, the facility must provide the patient with the contact information ~~address~~ of the consumer advocate as provided in s. 627.0613 ~~agency~~ to which the issue may be sent for review.

~~(12) Each licensed facility shall make available on its Internet website a link to the performance outcome and financial data that is published by the Agency for Health Care Administration pursuant to s. 408.05(3)(k). The facility shall place a notice in the reception area that the information is available electronically and the facility's Internet website address.~~

Section 2. Section 395.107, Florida Statutes, is amended to read:

395.107 Facilities ~~Urgent care centers~~; publishing and posting schedule of charges; penalties.—

523828

(1) For purposes of this section, "facility" means:

(a) An urgent care center as defined in s. 395.002; or

(b) A diagnostic-imaging center operated by a hospital licensed under this chapter which is not located on the hospital's premises.

(2) A facility ~~An urgent care center~~ must publish and post a schedule of charges for the medical services offered to patients.

(3) ~~(2)~~ The schedule of charges must describe the medical services in language comprehensible to a layperson. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area and must include, but is not limited to, the 50 services most frequently provided. The schedule may group services by three price levels, listing services in each price level. The posting may be a sign, which must be at least 15 square feet in size, or may be through an electronic messaging board. If a facility ~~an urgent care center~~ is affiliated with a ~~facility~~ licensed hospital under this chapter, the schedule must include text that notifies the insured patients whether the charges for medical services received at the center will be the same as, or more than, charges for medical services received at the affiliated hospital. The text notifying the patient of the schedule of charges shall be in a font size equal to or greater than the font size used for prices and must be in a contrasting color. The text that notifies the insured patients whether the charges for medical services received at the center will be the same as, or more than, charges for medical services received at

523828

the affiliated hospital shall be included in all media and Internet advertisements for the center and in language comprehensible to a layperson.

(4) ~~(3)~~ The posted text describing the medical services must fill at least 12 square feet of the posting. A facility ~~center~~ may use an electronic device or messaging board to post the schedule of charges. Such a device must be at least 3 square feet, and patients must be able to access the schedule during all hours of operation of the facility ~~urgent care center~~.

(5) ~~(4)~~ A facility ~~An urgent care center~~ that is operated and used exclusively for employees and the dependents of employees of the business that owns or contracts for the facility ~~urgent care center~~ is exempt from this section.

(6) ~~(5)~~ The failure of a facility ~~an urgent care center~~ to publish and post a schedule of charges as required by this section shall result in a fine of not more than $1,000, per day, until the schedule is published and posted.

Section 3. Section 395.3012, Florida Statutes, is created to read:

395.3012 Penalties for unconscionable prices.—

(1) The agency may impose administrative fines based on the findings of the consumer advocate’s investigation of billing complaints pursuant to s. 627.0613(6).

(2) The administrative fines for noncompliance with s. 395.301 are the greater of $2,500 per violation or double the amount of the original charges.

Section 4. Subsection (1) of section 400.487, Florida Statutes, is amended to read:

400.487 Home health service agreements; physician’s,

523828

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.—

(1)(a) 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.

(b) Every licensed home health agency shall provide upon the request of a prospective patient or his or her legal guardian a written, good faith estimate of reasonably anticipated charges for the prospective patient for services provided by the home health agency. The home health agency must provide the estimate to the requestor within 7 business days after receiving the request. The home health agency must inform the prospective patient, or his or her legal guardian, that he or she may contact the prospective patient's health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The home health agency must also provide information disclosing the home health agency's payment plans, discounts, and other available assistance and its collection procedures.

Section 5. Subsection (23) is added to section 400.934, Florida Statutes, to read:

523828

400.934 Minimum standards.—As a requirement of licensure, home medical equipment providers shall:

(23) Provide upon the request of a prospective patient or his or her legal guardian a written, good faith estimate of reasonably anticipated charges for the prospective patient for services provided by the home medical equipment provider. The home medical equipment provider must provide the estimate to the requestor within 7 business days after receiving the request. The home medical equipment provider must inform the prospective patient, or his or her legal guardian, that he or she may contact the prospective patient's health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The home medical equipment provider must also provide information disclosing the home medical equipment provider's payment plans, discounts, and other available assistance and its collection procedures.

Section 6. Section 408.05, Florida Statutes, is amended to read:

408.05 Florida Center for Health Information and Transparency ~~Policy Analysis~~.—

(1) ESTABLISHMENT.—The agency shall establish and maintain a Florida Center for Health Information and Transparency to collect, compile, coordinate, analyze, index, and disseminate ~~Policy Analysis. The center shall establish a comprehensive health information system to provide for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant~~ health-related data and statistics. The center shall be staffed as ~~with public health experts, biostatisticians, information~~


523828

~~system analysts, health policy experts, economists, and other staff~~ necessary to carry out its functions.

(2) HEALTH-RELATED DATA.—The ~~comprehensive health information system operated by the~~ Florida Center for Health Information and Transparency ~~Policy Analysis~~ shall identify ~~the best~~ available data sets, compile new data when specifically authorized, ~~data sources~~ and promote the use ~~coordinate the compilation~~ of extant health-related data and statistics. The center must maintain any data sets in existence before July 1, 2016, unless such data sets duplicate information that is readily available from other credible sources, and may ~~and purposefully~~ collect or compile data on:

~~(a) The extent and nature of illness and disability of the state population, including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality.~~

~~(b) The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state.~~

~~(c) Environmental, social, and other health hazards.~~

~~(d) Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status.~~

(a) ~~(c)~~ Health resources, including licensed ~~physicians, dentists, nurses, and other~~ health care practitioners ~~professionals~~, by specialty and type of practice. Such data shall include information collected by the Department of Health pursuant to ss. 458.3191 and 459.0081.

(b) Health service inventories, including ~~and~~ acute care,


523828

long-term care, and other institutional care facilities ~~facility supplies~~ and specific services provided by hospitals, nursing homes, home health agencies, and other licensed health care facilities.

(c) ~~(f)~~ Service utilization for licensed health care facilities ~~of health care by type of provider~~.

(d) ~~(g)~~ Health care costs and financing, including trends in health care prices and costs, the sources of payment for health care services, and federal, state, and local expenditures for health care.

~~(h) Family formation, growth, and dissolution.~~

(e) ~~(i)~~ The extent of public and private health insurance coverage in this state.

(f) ~~(j)~~ Specific quality-of-care initiatives involving ~~The quality of care provided by~~ various health care providers when extant data is not adequate to achieve the objectives of the initiative.

(3) ~~COMPREHENSIVE~~ HEALTH INFORMATION TRANSPARENCY ~~SYSTEM~~.—In order to disseminate and facilitate the availability of ~~produce~~ comparable and uniform health information ~~and statistics for the development of policy recommendations~~, the agency shall perform the following functions:

(a) Collect and compile information on and coordinate the activities of state agencies involved in providing ~~the design and implementation of the comprehensive~~ health information to consumers ~~system~~.

(b) Promote data sharing through dissemination of state-collected health data by making such data available, transferable, and readily usable ~~Undertake research,~~


523828

~~development, and evaluation respecting the comprehensive health information system~~.

(c) Contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures and allows for price comparison. The Internet-based platform must allow a consumer to search by condition or service bundles that are comprehensible to a layperson and may not require registration, a security password, or user identification. The vendor shall also establish and maintain a Florida-specific data set of health care claims information available to the public and any interested party. The agency shall actively oversee the vendor to ensure compliance with state law. The agency shall select the vendor through an invitation to negotiate. A responsive vendor must be a nonprofit research institute that is qualified under s. 1874 of the Social Security Act to receive Medicare claims data and that receives claims, payment, and patient cost-share data from multiple private insurers nationwide. By July 1, 2016, a responsive vendor must have:

1. A national database consisting of at least 15 billion claim lines of administrative claims data from multiple payors capable of being expanded by adding third-party payors, including employers with health plans covered by the Employee Retirement Income Security Act of 1974.

2. A well-developed methodology for analyzing claims data within defined service bundles.

3. A bundling methodology that is available in the public domain to allow for consistency and comparison of state and national benchmarks with local regions and specific providers.


523828

~~(c) Review the statistical activities of state agencies to ensure that they are consistent with the comprehensive health information system.~~

(d) Develop written agreements with local, state, and federal agencies to facilitate ~~for~~ the sharing of data related to health care ~~health-care-related data or using the facilities and services of such agencies. State agencies, local health councils, and other agencies under state contract shall assist the center in obtaining, compiling, and transferring health-care-related data maintained by state and local agencies. Written agreements must specify the types, methods, and periodicity of data exchanges and specify the types of data that will be transferred to the center~~.

(e) Establish by rule:

1. The types of data collected, compiled, processed, used, or shared.

2. Requirements for implementation of the consumer-friendly, Internet-based platform created by the contracted vendor under paragraph (c).

3. Requirements for the submission of data by insurers pursuant to s. 627.6385 and health maintenance organizations pursuant to s. 641.54 to the contracted vendor under paragraph (c).

4. Requirements governing the collection of data by the contracted vendor under paragraph (c).

5. How information is to be published on the consumer-friendly, Internet-based platform created under paragraph (c) for public use. ~~Decisions regarding center data sets should be made based on consultation with the State Consumer Health~~

~~Information and Policy Advisory Council and other public and private users regarding the types of data which should be collected and their uses. The center shall establish standardized means for collecting health information and statistics under laws and rules administered by the agency.~~

(f) Consult with contracted vendors, the State Consumer Health Information and Policy Advisory Council, and other public and private users regarding the types of data that should be collected and the use of such data.

(g) Monitor data collection procedures and test data quality to facilitate the dissemination of data that is accurate, valid, reliable, and complete.

~~(f) Establish minimum health-care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data. The agency shall periodically review ongoing health care data collections of the Department of Health and other state agencies to determine if the collections are being conducted in accordance with the established minimum sets of data.~~

~~(g) Establish advisory standards to ensure the quality of health statistical and epidemiological data collection, processing, and analysis by local, state, and private organizations.~~

~~(h) Prescribe standards for the publication of health-care-related data reported pursuant to this section which ensure the reporting of accurate, valid, reliable, complete, and comparable data. Such standards should include advisory warnings to users of the data regarding the status and quality of any data~~


523828

~~reported by or available from the center.~~

(h) ~~(i)~~ Develop ~~Prescribe standards for the maintenance and preservation of the center's data. This should include~~ methods for archiving data, retrieval of archived data, and data editing and verification.

~~(j) Ensure that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests.~~

(i) ~~(k)~~ Make ~~Develop, in conjunction with the State Consumer Health Information and Policy Advisory Council, and implement a long-range plan for making~~ available health care quality measures ~~and financial data~~ that will allow consumers to compare outcomes and other performance measures for health care services. ~~The health care quality measures and financial data the agency must make available include, but are not limited to, pharmaceuticals, physicians, health care facilities, and health plans and managed care entities. The agency shall update the plan and report on the status of its implementation annually. The agency shall also make the plan and status report available to the public on its Internet website. As part of the plan, the agency shall identify the process and timeframes for implementation, barriers to implementation, and recommendations of changes in the law that may be enacted by the Legislature to eliminate the barriers. As preliminary elements of the plan, the agency shall:~~

~~1. Make available patient-safety indicators, inpatient quality indicators, and performance outcome and patient charge data collected from health care facilities pursuant to s. 408.061(1)(a) and (2). The terms "patient-safety indicators" and~~

523828

~~"inpatient quality indicators" have the same meaning as that ascribed by the Centers for Medicare and Medicaid Services, an accrediting organization whose standards incorporate comparable regulations required by this state, or a national entity that establishes standards to measure the performance of health care providers, or by other states. The agency shall determine which conditions, procedures, health care quality measures, and patient charge data to disclose based upon input from the council. When determining which conditions and procedures are to be disclosed, the council and the agency shall consider variation in costs, variation in outcomes, and magnitude of variations and other relevant information. When determining which health care quality measures to disclose, the agency:~~

~~a. Shall consider such factors as volume of cases; average patient charges; average length of stay; complication rates; mortality rates; and infection rates, among others, which shall be adjusted for case mix and severity, if applicable.~~

~~b. May consider such additional measures that are adopted by the Centers for Medicare and Medicaid Studies, an accrediting organization whose standards incorporate comparable regulations required by this state, the National Quality Forum, the Joint Commission on Accreditation of Healthcare Organizations, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, or a similar national entity that establishes standards to measure the performance of health care providers, or by other states.~~

~~When determining which patient charge data to disclose, the agency shall include such measures as the average of~~

523828

~~undiscounted charges on frequently performed procedures and preventive diagnostic procedures, the range of procedure charges from highest to lowest, average net revenue per adjusted patient day, average cost per adjusted patient day, and average cost per admission, among others.~~

~~2. Make available performance measures, benefit design, and premium cost data from health plans licensed pursuant to chapter 627 or chapter 641. The agency shall determine which health care quality measures and member and subscriber cost data to disclose, based upon input from the council. When determining which data to disclose, the agency shall consider information that may be required by either individual or group purchasers to assess the value of the product, which may include membership satisfaction, quality of care, current enrollment or membership, coverage areas, accreditation status, premium costs, plan costs, premium increases, range of benefits, copayments and deductibles, accuracy and speed of claims payment, credentials of physicians, number of providers, names of network providers, and hospitals in the network. Health plans shall make available to the agency such data or information that is not currently reported to the agency or the office.~~

~~3. Determine the method and format for public disclosure of data reported pursuant to this paragraph. The agency shall make its determination based upon input from the State Consumer Health Information and Policy Advisory Council. At a minimum, the data shall be made available on the agency's Internet website in a manner that allows consumers to conduct an interactive search that allows them to view and compare the information for specific providers. The website must include~~

523828

~~such additional information as is determined necessary to ensure that the website enhances informed decisionmaking among consumers and health care purchasers, which shall include, at a minimum, appropriate guidance on how to use the data and an explanation of why the data may vary from provider to provider.~~

~~4. Publish on its website undiscounted charges for no fewer than 150 of the most commonly performed adult and pediatric procedures, including outpatient, inpatient, diagnostic, and preventative procedures.~~

~~(4) TECHNICAL ASSISTANCE.—~~

~~(a) The center shall provide technical assistance to persons or organizations engaged in health planning activities in the effective use of statistics collected and compiled by the center. The center shall also provide the following additional technical assistance services:~~

~~1. Establish procedures identifying the circumstances under which, the places at which, the persons from whom, and the methods by which a person may secure data from the center, including procedures governing requests, the ordering of requests, timeframes for handling requests, and other procedures necessary to facilitate the use of the center's data. To the extent possible, the center should provide current data timely in response to requests from public or private agencies.~~

~~2. Provide assistance to data sources and users in the areas of database design, survey design, sampling procedures, statistical interpretation, and data access to promote improved health-care-related data sets.~~

~~3. Identify health care data gaps and provide technical assistance to other public or private organizations for meeting~~

523828

~~documented health care data needs.~~

~~4. Assist other organizations in developing statistical abstracts of their data sets that could be used by the center.~~

~~5. Provide statistical support to state agencies with regard to the use of databases maintained by the center.~~

~~6. To the extent possible, respond to multiple requests for information not currently collected by the center or available from other sources by initiating data collection.~~

~~7. Maintain detailed information on data maintained by other local, state, federal, and private agencies in order to advise those who use the center of potential sources of data which are requested but which are not available from the center.~~

~~8. Respond to requests for data which are not available in published form by initiating special computer runs on data sets available to the center.~~

~~9. Monitor innovations in health information technology, informatics, and the exchange of health information and maintain a repository of technical resources to support the development of a health information network.~~

~~(b) The agency shall administer, manage, and monitor grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information network. Any grant contract shall be evaluated to ensure the effective outcome of the health information project.~~

~~(c) The agency shall initiate, oversee, manage, and evaluate the integration of health care data from each state agency that collects, stores, and reports on health care issues~~

523828

~~and make that data available to any health care practitioner through a state health information network.~~

~~(5) PUBLICATIONS; REPORTS; SPECIAL STUDIES.—The center shall provide for the widespread dissemination of data which it collects and analyzes. The center shall have the following publication, reporting, and special study functions:~~

~~(a) The center shall publish and make available periodically to agencies and individuals health statistics publications of general interest, including health plan consumer reports and health maintenance organization member satisfaction surveys; publications providing health statistics on topical health policy issues; publications that provide health status profiles of the people in this state; and other topical health statistics publications.~~

(j) ~~(b) The center shall publish,~~ Make available~~, and disseminate, promptly and as widely as practicable,~~ the results of special health surveys, health care research, and health care evaluations conducted or supported under this section. ~~Any publication by the center must include a statement of the limitations on the quality, accuracy, and completeness of the data.~~

~~(c) The center shall provide indexing, abstracting, translation, publication, and other services leading to a more effective and timely dissemination of health care statistics.~~

~~(d) The center shall be responsible for publishing and disseminating an annual report on the center's activities.~~

~~(e) The center shall be responsible, to the extent resources are available, for conducting a variety of special studies and surveys to expand the health care information and~~


523828

~~statistics available for health policy analyses, particularly for the review of public policy issues. The center shall develop a process by which users of the center's data are periodically surveyed regarding critical data needs and the results of the survey considered in determining which special surveys or studies will be conducted. The center shall select problems in health care for research, policy analyses, or special data collections on the basis of their local, regional, or state importance; the unique potential for definitive research on the problem; and opportunities for application of the study findings.~~

(4) ~~(6)~~ PROVIDER DATA REPORTING.—This section does not confer on the agency the power to demand or require that a health care provider or professional furnish information, records of interviews, written reports, statements, notes, memoranda, or data other than as expressly required by law. The agency may not establish an all-payor claims database or a comparable database without express legislative authority.

(5) ~~(7)~~ BUDGET; FEES.—

(a) ~~The Legislature intends that funding for the Florida Center for Health Information and Policy Analysis be appropriated from the General Revenue Fund.~~

~~(b)~~ The Florida Center for Health Information and Transparency ~~Policy Analysis~~ may apply for and receive and accept grants, gifts, and other payments, including property and services, from any governmental or other public or private entity or person and make arrangements as to the use of same, including the undertaking of special studies and other projects relating to health-care-related topics. Funds obtained pursuant


523828

to this paragraph may not be used to offset annual appropriations from the General Revenue Fund.

(b) ~~(c)~~ The center may charge such reasonable fees for services as the agency prescribes by rule. The established fees may not exceed the reasonable cost for such services. Fees collected may not be used to offset annual appropriations from the General Revenue Fund.

(6) ~~(8)~~ STATE CONSUMER HEALTH INFORMATION AND POLICY ADVISORY COUNCIL.—

(a) There is established in the agency the State Consumer Health Information and Policy Advisory Council to assist the center ~~in reviewing the comprehensive health information system, including the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities and to recommend improvements for purposes of public health, policy analysis, and transparency of consumer health care information~~. The council consists ~~shall consist~~ of the following members:

1. An employee of the Executive Office of the Governor, to be appointed by the Governor.

2. An employee of the Office of Insurance Regulation, to be appointed by the director of the office.

3. An employee of the Department of Education, to be appointed by the Commissioner of Education.

4. Ten persons, to be appointed by the Secretary of Health Care Administration, representing other state and local agencies, state universities, business and health coalitions, local health councils, professional health-care-related


523828

associations, consumers, and purchasers.

(b) Each member of the council shall be appointed to serve for a term of 2 years following the date of appointment~~, except the term of appointment shall end 3 years following the date of appointment for members appointed in 2003, 2004, and 2005~~. A vacancy shall be filled by appointment for the remainder of the term, and each appointing authority retains the right to reappoint members whose terms of appointment have expired.

(c) The council may meet at the call of its chair, at the request of the agency, or at the request of a majority of its membership, but the council must meet at least quarterly.

(d) Members shall elect a chair and vice chair annually.

(e) A majority of the members constitutes a quorum, and the affirmative vote of a majority of a quorum is necessary to take action.

(f) The council shall maintain minutes of each meeting and shall make such minutes available to any person.

(g) Members of the council shall serve without compensation but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(h) The council's duties and responsibilities include, but are not limited to, the following:

1. To develop a mission statement, goals, and a plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities.

2. To develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data.


523828

3. To create ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the council.

(7)~~(9)~~ APPLICATION TO OTHER AGENCIES.~~—Nothing in~~ This section does not ~~shall~~ limit, restrict, affect, or control the collection, analysis, release, or publication of data by any state agency pursuant to its statutory authority, duties, or responsibilities.

Section 7. Subsection (1) of section 408.061, Florida Statutes, is amended to read:

408.061 Data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.—

(1) The agency shall require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the agency's duties and to facilitate transparency in health care pricing data and quality measures. Specifications for data to be collected under this section shall be developed by the agency and applicable contract vendors, with the assistance of technical advisory panels including representatives of affected entities, consumers, purchasers, and such other interested parties as may be determined by the agency.

(a) Data submitted by health care facilities, including the facilities as defined in chapter 395, shall include, but are not limited to: case-mix data, patient admission and discharge data, hospital emergency department data which shall include the number of patients treated in the emergency department of a licensed hospital reported by patient acuity level, data on hospital-acquired infections as specified by rule, data on

complications as specified by rule, data on readmissions as specified by rule, with patient and provider-specific identifiers included, actual charge data by diagnostic groups or other bundled groupings as specified by rule, financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, depreciation expenses based on the expected useful life of the property and equipment involved, and demographic data. The agency shall adopt nationally recognized risk adjustment methodologies or software consistent with the standards of the Agency for Healthcare Research and Quality and as selected by the agency for all data submitted as required by this section. Data may be obtained from documents such as, but not limited to: leases, contracts, debt instruments, itemized patient statements or bills, medical record abstracts, and related diagnostic information. Reported data elements shall be reported electronically in accordance with rule 59E-7.012, Florida Administrative Code. Data submitted shall be certified by the chief executive officer or an appropriate and duly authorized representative or employee of the licensed facility that the information submitted is true and accurate.

(b) Data to be submitted by health care providers may include, but are not limited to: professional organization and specialty board affiliations, Medicare and Medicaid participation, types of services offered to patients, actual charges to patients as specified by rule, amount of revenue and expenses of the health care provider, and such other data which are reasonably necessary to study utilization patterns. Data submitted shall be certified by the appropriate duly authorized


523828

representative or employee of the health care provider that the information submitted is true and accurate.

(c) Data to be submitted by health insurers may include, but are not limited to: claims, payments to health care facilities and health care providers as specified by rule, premium, administration, and financial information. Data submitted shall be certified by the chief financial officer, an appropriate and duly authorized representative, or an employee of the insurer that the information submitted is true and accurate. Information that is considered a trade secret under s. 812.081 shall be clearly designated.

(d) Data required to be submitted by health care facilities, health care providers, or health insurers may ~~shall~~ not include specific provider contract reimbursement information. However, such specific provider reimbursement data shall be reasonably available for onsite inspection by the agency as is necessary to carry out the agency's regulatory duties. Any such data obtained by the agency as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) A requirement to submit data shall be adopted by rule if the submission of data is being required of all members of any type of health care facility, health care provider, or health insurer. Rules are not required, however, for the submission of data for a special study mandated by the Legislature or when information is being requested for a single health care facility, health care provider, or health insurer.

523828

Section 8. Section 456.0575, Florida Statutes, is amended to read:

456.0575 Duty to notify patients.—

(1) Every licensed health care practitioner 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 of admission of liability, nor can such notifications be introduced as evidence.

(2) Every licensed health care practitioner must provide upon request by a patient, before providing any nonemergency medical services in a facility licensed under chapter 395, a written, good faith estimate of reasonably anticipated charges to treat the patient's condition at the facility. The health care practitioner must provide the estimate to the patient within 7 business days after receiving the request and is not required to adjust the estimate for any potential insurance coverage. The health care practitioner must inform the patient that he or she may contact his or her health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The health care practitioner must provide information to uninsured patients and insured patients for whom the practitioner is not a network provider or preferred provider which discloses the practitioner's financial assistance policy, including the application process, payment plans, discounts, or other available assistance, and the practitioner's charity care policy and collection procedures. Such estimate does not preclude the actual charges from exceeding the


523828

estimate. Failure to provide the estimate in accordance with this subsection, without good cause, shall result in disciplinary action against the health care practitioner and a daily fine of $500 until the estimate is provided to the patient. The total fine may not exceed $5,000.

Section 9. Paragraph (oo) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(oo) Failure to comply with fair billing practices pursuant to s. 627.0613(6).

Section 10. Section 627.0613, Florida Statutes, is amended to read:

627.0613 Consumer advocate.—The Chief Financial Officer must appoint a consumer advocate who must represent the general public of the state before the department, ~~and~~ the office, and other state agencies, as required by this section. The consumer advocate must report directly to the Chief Financial Officer, but is not otherwise under the authority of the department or of any employee of the department. The consumer advocate has such powers as are necessary to carry out the duties of the office of consumer advocate, including, but not limited to, the powers to:

(1) Recommend to the department or office, by petition, the commencement of any proceeding or action; appear in any proceeding or action before the department or office; or appear in any proceeding before the Division of Administrative Hearings relating to subject matter under the jurisdiction of the

523828

department or office.

(2) Report to the Agency for Health Care Administration and to the Department of Health any findings resulting from investigation of unresolved complaints concerning the billing practices of any health care facility licensed under chapter 395 or any health care practitioner subject to chapter 456.

(3) ~~(2)~~ Have access to and use of all files, records, and data of the department or office.

(4) Have access to any files, records, and data of the Agency for Health Care Administration and the Department of Health which are necessary for the investigations authorized by subsection (6).

(5) ~~(3)~~ Examine rate and form filings submitted to the office, hire consultants as necessary to aid in the review process, and recommend to the department or office any position deemed by the consumer advocate to be in the public interest.

(6) Maintain a process for receiving and investigating complaints from insured and uninsured patients of health care facilities licensed under chapter 395 and health care practitioners subject to chapter 456 concerning billing practices. Investigations by the office of the consumer advocate shall be limited to determining compliance with the following requirements:

(a) The patient was informed before a nonemergency procedure of expected payments related to the procedure as provided in s. 395.301, contact information for health insurers or health maintenance organizations to determine specific cost-sharing responsibilities, and the expected involvement in the procedure of other providers who may bill independently.

(b) The patient was informed of policies and procedures to qualify for discounted charges.

(c) The patient was informed of collection procedures and given the opportunity to participate in an extended payment schedule.

(d) The patient was given a written, personal, and itemized estimate upon request as provided in ss. 395.301 and 456.0575.

(e) The statement or bill delivered to the patient was accurate and included all information required pursuant to s. 395.301.

(f) The billed amounts were fair charges. As used in this paragraph, the term "fair charges" means the common and frequent range of charges for patients who are similarly situated requiring the same or similar medical services.

(7) Provide mediation between providers and patients to resolve billing complaints and negotiate arrangements for extended payment schedules.

(8)~~(4)~~ Prepare an annual budget for presentation to the Legislature by the department, which budget must be adequate to carry out the duties of the office of consumer advocate.

Section 11. Section 627.6385, Florida Statutes, is created to read:

627.6385 Disclosures to policyholders; calculations of cost sharing.—

(1) Each health insurer shall make available on its website:

(a) A method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities for health care services and procedures. Such method of making

523828

an estimate shall be based on service bundles established pursuant to s. 408.05(3)(c). Estimates do not preclude the actual copayment, coinsurance percentage, or deductible, whichever is applicable, from exceeding the estimate.

1. Estimates shall be calculated according to the policy and known plan usage during the coverage period.

2. Estimates shall be made available based on providers that are in-network and out-of-network.

3. A policyholder must be able to create estimates by any combination of the service bundles established pursuant to s. 408.05(3)(c), by a specified provider, or a comparison of providers.

(b) A method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities based on a personalized estimate of charges received from a facility pursuant to s. 395.301 or a practitioner pursuant to s. 456.0575.

(c) A hyperlink to the health information, including, but not limited to, service bundles and quality of care information, which is disseminated by the Agency for Health Care Administration pursuant to s. 408.05(3).

(2) Each health insurer shall include in every policy delivered or issued for delivery to any person in the state or in materials provided as required by s. 627.64725 notice that the information required by this section is available electronically and the address of the website where the information can be accessed.

(3) Each health insurer that participates in the state group health insurance plan created under s. 110.123 or Medicaid

523828

managed care pursuant to part IV of chapter 409 shall contribute all claims data from Florida policyholders held by the insurer and its affiliates to the contracted vendor selected by the Agency for Health Care Administration under s. 408.05(3)(c). Each insurer and its affiliates may not contribute claims data to the contracted vendor which reflect the following types of coverage:

(a) Coverage only for accident, or disability income insurance, or any combination thereof.

(b) Coverage issued as a supplement to liability insurance.

(c) Liability insurance, including general liability insurance and automobile liability insurance.

(d) Workers' compensation or similar insurance.

(e) Automobile medical payment insurance.

(f) Credit-only insurance.

(g) Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.

(h) Limited scope dental or vision benefits.

(i) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(j) Coverage only for a specified disease or illness.

(k) Hospital indemnity or other fixed indemnity insurance.

(l) Medicare supplemental health insurance as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under chapter 55 of Title 10 U.S.C., and similar supplemental coverage provided to supplement coverage under a group health plan.

Section 12. Subsection (6) of section 641.54, Florida Statutes, is amended, present subsection (7) of that section is


523828

redesignated as subsection (8) and amended, and a new subsection (7) is added to that section, to read:

641.54 Information disclosure.—

(6) Each health maintenance organization shall make available to its subscribers on its website or by request the estimated copayment ~~copay~~, coinsurance percentage, or deductible, whichever is applicable, for any covered services as described by the searchable bundles established on a consumer-friendly, Internet-based platform pursuant to s. 408.05(3)(c) or as described by a personalized estimate received from a facility pursuant to s. 395.301 or a practitioner pursuant to s. 456.0575, the status of the subscriber's maximum annual out-of-pocket payments for a covered individual or family, and the status of the subscriber's maximum lifetime benefit. Such estimate does ~~shall~~ not preclude the actual copayment ~~copay~~, coinsurance percentage, or deductible, whichever is applicable, from exceeding the estimate.

(7) Each health maintenance organization that participates in the state group health insurance plan created under s. 110.123 or Medicaid managed care pursuant to part IV of chapter 409 shall contribute all claims data from Florida subscribers held by the organization and its affiliates to the contracted vendor selected by the Agency for Health Care Administration under s. 408.05(3)(c). Each health maintenance organization and its affiliates may not contribute claims data to the contracted vendor which reflect the following types of coverage:

(a) Coverage only for accident, or disability income insurance, or any combination thereof.

(b) Coverage issued as a supplement to liability insurance.

523828

(c) Liability insurance, including general liability insurance and automobile liability insurance.

(d) Workers' compensation or similar insurance.

(e) Automobile medical payment insurance.

(f) Credit-only insurance.

(g) Coverage for onsite medical clinics, including prepaid health clinics under part II of chapter 641.

(h) Limited scope dental or vision benefits.

(i) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(j) Coverage only for a specified disease or illness.

(k) Hospital indemnity or other fixed indemnity insurance.

(l) Medicare supplemental health insurance as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under chapter 55 of Title 10 U.S.C., and similar supplemental coverage provided to supplement coverage under a group health plan.

(8)~~(7)~~ Each health maintenance organization shall make available on its ~~Internet~~ website a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the Agency for Health Care Administration pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~ and shall include in every policy delivered or issued for delivery to any person in the state or in ~~any~~ materials provided as required by s. 627.64725 notice that such information is available electronically and the address of its ~~Internet~~ website.

Section 13. Paragraph (n) is added to subsection (2) of section 409.967, Florida Statutes, to read:


523828

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(n) *Transparency.*—Managed care plans shall comply with ss. 627.6385(3) and 641.54(7).

Section 14. Paragraph (d) of subsection (3) of section 110.123, Florida Statutes, is amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(d)1. Notwithstanding ~~the provisions of~~ chapter 287 and the authority of the department, for the purpose of protecting the health of, and providing medical services to, state employees participating in the state group insurance program, the department may contract to retain the services of professional administrators for the state group insurance program. The agency shall follow good purchasing practices of state procurement to the extent practicable under the circumstances.

2. Each vendor in a major procurement, and any other vendor if the department deems it necessary to protect the state's financial interests, shall, at the time of executing any contract with the department, post an appropriate bond with the department in an amount determined by the department to be adequate to protect the state's interests but not higher than the full amount estimated to be paid annually to the vendor under the contract.

3. Each major contract entered into by the department pursuant to this section shall contain a provision for payment


523828

of liquidated damages to the department for material noncompliance by a vendor with a contract provision. The department may require a liquidated damages provision in any contract if the department deems it necessary to protect the state's financial interests.

4. Section ~~The provisions of s.~~ 120.57(3) applies ~~apply~~ to the department's contracting process, except:

a. A formal written protest of any decision, intended decision, or other action subject to protest shall be filed within 72 hours after receipt of notice of the decision, intended decision, or other action.

b. As an alternative to any provision of s. 120.57(3), the department may proceed with the bid selection or contract award process if the director of the department sets forth, in writing, particular facts and circumstances that ~~which~~ demonstrate the necessity of continuing the procurement process or the contract award process in order to avoid a substantial disruption to the provision of any scheduled insurance services.

5. The department shall make arrangements as necessary to contribute claims data of the state group health insurance plan to the contracted vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

6. Each contracted vendor for the state group health insurance plan shall contribute Florida claims data to the contracted vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

Section 15. Subsection (3) of section 20.42, Florida Statutes, is amended to read:

20.42 Agency for Health Care Administration.—


523828

(3) The department shall be the chief health policy and planning entity for the state. The department is responsible for health facility licensure, inspection, and regulatory enforcement; investigation of consumer complaints related to health care facilities and managed care plans; the implementation of the certificate of need program; the operation of the Florida Center for Health Information and Transparency ~~Policy Analysis~~; the administration of the Medicaid program; the administration of the contracts with the Florida Healthy Kids Corporation; the certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641; and any other duties prescribed by statute or agreement.

Section 16. Paragraph (c) of subsection (4) of section 381.026, Florida Statutes, is amended to read:

381.026 Florida Patient's Bill of Rights and Responsibilities.—

(4) RIGHTS OF PATIENTS.—Each health care facility or provider shall observe the following standards:

(c) *Financial information and disclosure.*—

1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a representative of the health care facility full information and necessary counseling on the availability of known financial resources for the patient's health care.

2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before treatment, whether the health care provider or the health care facility in which the patient is receiving


523828

medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

3. A primary care provider may publish a schedule of charges for the medical services that the provider offers to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office and must include, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.

4. If a primary care provider publishes a schedule of charges pursuant to subparagraph 3., he or she must continually post it at all times for the duration of active licensure in this state when primary care services are provided to patients. If a primary care provider fails to post the schedule of charges in accordance with this subparagraph, the provider shall be required to pay any license fee and comply with any continuing education requirements for which an exemption was received.

5. A health care provider or a health care facility shall,


523828

upon request, furnish a person, before the provision of medical services, a reasonable estimate of charges for such services. The health care provider or the health care facility shall provide an uninsured person, before the provision of a planned nonemergency medical service, a reasonable estimate of charges for such service and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. Such estimates by a primary care provider must be consistent with the schedule posted under subparagraph 3. Estimates shall, to the extent possible, be written in language comprehensible to an ordinary layperson. Such reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.

6. Each licensed facility, except a facility operating exclusively as a state facility, ~~not operated by the state~~ shall make available to the public on its ~~Internet~~ website or by other electronic means a description of and a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the agency pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~. The facility shall place a notice in the reception area that such information is available electronically and the website address. The licensed facility may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's statement or bill may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for


523828

eligible patients based upon the patient's ability to pay.

7. A patient has the right to receive a copy of an itemized statement or bill upon request. A patient has a right to be given an explanation of charges upon request.

Section 17. Paragraph (e) of subsection (2) of section 395.602, Florida Statutes, is amended to read:

395.602 Rural hospitals.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Rural hospital" means an acute care hospital licensed under this chapter, having 100 or fewer licensed beds and an emergency room, which is:

1. The sole provider within a county with a population density of up to 100 persons per square mile;

2. An acute care hospital, in a county with a population density of up to 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;

3. A hospital supported by a tax district or subdistrict whose boundaries encompass a population of up to 100 persons per square mile;

4. A hospital with a service area that has a population of up to 100 persons per square mile. As used in this subparagraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the agency; or

523828

5. A hospital designated as a critical access hospital, as defined in s. 408.07.

Population densities used in this paragraph must be based upon the most recently completed United States census. A hospital that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this paragraph shall be granted such designation upon application, including supporting documentation, to the agency. A hospital that was licensed as a rural hospital during the 2010-2011 or 2011-2012 fiscal year shall continue to be a rural hospital from the date of designation through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room.

Section 18. Section 395.6025, Florida Statutes, is amended to read:

395.6025 Rural hospital replacement facilities.—Notwithstanding ~~the provisions of~~ s. 408.036, a hospital defined as a statutory rural hospital in accordance with s. 395.602, or a not-for-profit operator of rural hospitals, is not required to obtain a certificate of need for the construction of a new hospital located in a county with a population of at least 15,000 but no more than 18,000 and a density of fewer ~~less~~ than 30 persons per square mile, or a replacement facility, provided that the replacement, or new, facility is located within 10


523828

miles of the site of the currently licensed rural hospital and within the current primary service area. As used in this section, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the Agency for Health Care Administration.

Section 19. Subsection (43) of section 408.07, Florida Statutes, is amended to read:

408.07 Definitions.—As used in this chapter, with the exception of ss. 408.031-408.045, the term:

(43) "Rural hospital" means an acute care hospital licensed under chapter 395, having 100 or fewer licensed beds and an emergency room, and which is:

(a) The sole provider within a county with a population density of no greater than 100 persons per square mile;

(b) An acute care hospital, in a county with a population density of no greater than 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from another acute care hospital within the same county;

(c) A hospital supported by a tax district or subdistrict whose boundaries encompass a population of 100 persons or fewer per square mile;

(d) A hospital with a service area that has a population of 100 persons or fewer per square mile. As used in this paragraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the


523828

most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the Agency for Health Care Administration; or

(e) A critical access hospital.

Population densities used in this subsection must be based upon the most recently completed United States census. A hospital that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2015, if the hospital continues to have 100 or fewer licensed beds and an emergency room. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this subsection shall be granted such designation upon application, including supporting documentation, to the Agency for Health Care Administration.

Section 20. Paragraph (a) of subsection (4) of section 408.18, Florida Statutes, is amended to read:

408.18 Health Care Community Antitrust Guidance Act; antitrust no-action letter; market-information collection and education.—

(4)(a) Members of the health care community who seek antitrust guidance may request a review of their proposed business activity by the Attorney General’s office. In conducting its review, the Attorney General’s office may seek whatever documentation, data, or other material it deems necessary from the Agency for Health Care Administration, the Florida Center for Health Information and Transparency ~~Policy~~

523828

~~Analysis~~, and the Office of Insurance Regulation of the Financial Services Commission.

Section 21. Section 465.0244, Florida Statutes, is amended to read:

465.0244 Information disclosure.—Every pharmacy shall make available on its ~~Internet~~ website a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the Agency for Health Care Administration pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~ and shall place in the area where customers receive filled prescriptions notice that such information is available electronically and the address of its Internet website.

Section 22. This act is intended to promote health care price and quality transparency to enable consumers to make informed choices on health care treatment and improve competition in the health care market. Persons or entities required to submit, receive, or publish data under this act are acting pursuant to state requirements contained therein and are exempt from state antitrust laws.

Section 23. This act shall take effect July 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 transparency in health care; amending s. 395.301, F.S.; requiring a facility licensed under ch. 395, F.S., to provide timely and


523828

accurate financial information and quality of service measures to certain individuals; providing an exemption; requiring a licensed facility to make available on its website certain information on payments made to that facility for defined bundles of services and procedures and other information for consumers and patients; requiring that facility websites provide specified information and notify and inform patients or prospective patients of certain information; requiring a facility to provide a written, good faith estimate of charges to a patient or prospective patient within a certain timeframe; requiring a facility to provide information regarding financial assistance from the facility which may be available to a patient or a prospective patient; providing a penalty for failing to provide an estimate of charges to a patient; deleting a requirement that a licensed facility not operated by the state provide notice to a patient of his or her right to an itemized statement or bill within a certain timeframe; revising the information that must be included on a patient's statement or bill; requiring that certain records be made available through electronic means that comply with a specified law; reducing the response time for certain patient requests for information; amending s. 395.107, F.S.; providing a definition; making technical changes; creating s. 395.3012, F.S.; authorizing the Agency for Health Care Administration to impose penalties based on certain findings of an


523828

investigation as determined by the consumer advocate; amending ss. 400.487 and 400.934, F.S.; requiring home health agencies and home medical equipment providers to provide upon request certain written estimates of charges within a certain timeframe; amending s. 408.05, F.S.; revising requirements for the collection and use of health-related data by the agency; requiring the agency to contract with a vendor to provide an Internet-based platform with certain attributes; requiring potential vendors to have certain qualifications; prohibiting the agency from establishing a certain database under certain circumstances; amending s. 408.061, F.S.; revising requirements for the submission of health care data to the agency; requiring submitted information considered a trade secret to be clearly designated; amending s. 456.0575, F.S.; requiring a health care practitioner to provide a patient upon his or her request a written, good faith estimate of anticipated charges within a certain timeframe; setting a maximum amount for total fines assessed in certain disciplinary actions; amending s. 456.072, F.S.; providing that the failure to comply with fair billing practices by a health care practitioner is grounds for disciplinary action; amending s. 627.0613, F.S.; providing that the consumer advocate must represent the general public before other state agencies; authorizing the consumer advocate to report findings relating to certain investigations to the agency and the Department of


523828

Health; authorizing the consumer advocate to have access to files, records, and data of the agency and the department necessary for certain investigations; authorizing the consumer advocate to maintain a process to receive and investigate complaints from patients relating to compliance with certain billing and notice requirements by licensed health care facilities and practitioners; defining a term; authorizing the consumer advocate to provide mediation between providers and consumers relating to certain matters; creating s. 627.6385, F.S.; requiring a health insurer to make available on its website certain methods that a policyholder can use to make estimates of certain costs and charges; providing that an estimate does not preclude an actual cost from exceeding the estimate; requiring a health insurer to make available on its website a hyperlink to certain health information; requiring a health insurer to include certain notice; requiring a health insurer that participates in the state group health insurance plan or Medicaid managed care to provide all claims data to a contracted vendor selected by the agency; excluding from the contributed claims data certain types of coverage; amending s. 641.54, F.S.; revising a requirement that a health maintenance organization make certain information available to its subscribers; requiring a health maintenance organization that participates in the state group health insurance plan or Medicaid managed care to provide all claims data to


523828

a contracted vendor selected by the agency; excluding from the contributed claims data certain types of coverage;; amending s. 409.967, F.S.; requiring managed care plans to provide all claims data to a contracted vendor selected by the agency; amending s. 110.123, F.S.; requiring the Department of Management Services to provide certain data to the contracted vendor for the price transparency database established by the agency; requiring a contracted vendor for the state group health insurance plan to provide claims data to the vendor selected by the agency; amending ss. 20.42, 381.026, 395.602, 395.6025, 408.07, 408.18, and 465.0244, F.S.; conforming provisions to changes made by the act; providing legislative intent; providing an effective date.


664560

576-02729A-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to transparency in health care; amending s. 395.301, F.S.; requiring a facility licensed under ch. 395, F.S., to provide timely and accurate financial information and quality of service measures to certain individuals; providing an exemption; requiring a licensed facility to make available on its website certain information on payments made to that facility for defined bundles of services and procedures and other information for consumers and patients; requiring that facility websites provide specified information and notify and inform patients or prospective patients of certain information; requiring a facility to provide a written, good faith estimate of charges to a patient or prospective patient within a certain timeframe; requiring a facility to provide information regarding financial assistance from the facility which may be available to a patient or a prospective patient; providing a penalty for failing to provide an estimate of charges to a patient; deleting a requirement that a licensed facility not operated by the state provide notice to a patient of his or her right to an itemized statement or bill within a certain timeframe; revising the information that must be included on a patient's statement or bill; requiring that certain records be made available through electronic means that comply


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with a specified law; reducing the response time for certain patient requests for information; creating s. 395.3012, F.S.; authorizing the Agency for Health Care Administration to impose penalties based on certain findings of an investigation as determined by the consumer advocate; amending ss. 400.487 and 400.934, F.S.; requiring home health agencies and home medical equipment providers to provide upon request certain written estimates of charges within a certain timeframe; amending s. 408.05, F.S.; revising requirements for the collection and use of health-related data by the agency; requiring the agency to contract with a vendor to provide an Internet-based platform with certain attributes; requiring potential vendors to have certain qualifications; prohibiting the agency from establishing a certain database under certain circumstances; amending s. 408.061, F.S.; revising requirements for the submission of health care data to the agency; amending s. 456.0575, F.S.; requiring a health care practitioner to provide a patient upon his or her request a written, good faith estimate of anticipated charges within a certain timeframe; amending s. 456.072, F.S.; providing that the failure to comply with fair billing practices by a health care practitioner is grounds for disciplinary action; amending s. 627.0613, F.S.; providing that the consumer advocate must represent the general public before other state agencies; authorizing the consumer advocate to report findings relating to certain

investigations to the agency and the Department of Health; authorizing the consumer advocate to have access to files, records, and data of the agency and the department necessary for certain investigations; authorizing the consumer advocate to maintain a process to receive and investigate complaints from patients relating to compliance with certain billing and notice requirements by licensed health care facilities and practitioners; defining a term; authorizing the consumer advocate to provide mediation between providers and consumers relating to certain matters; creating s. 627.6385, F.S.; requiring a health insurer to make available on its website certain methods that a policyholder can use to make estimates of certain costs and charges; providing that an estimate does not preclude an actual cost from exceeding the estimate; requiring a health insurer to make available on its website a hyperlink to certain health information; requiring a health insurer to include certain notice; requiring a health insurer that participates in the state group health insurance plan or Medicaid managed care to provide all claims data to a contracted vendor selected by the agency; amending s. 641.54, F.S.; revising a requirement that a health maintenance organization make certain information available to its subscribers; requiring a health maintenance organization that participates in the state group health insurance plan or Medicaid managed care to provide, to the greatest extent

possible, all claims data to a contracted vendor selected by the agency; amending s. 409.967, F.S.; requiring managed care plans to provide all claims data to a contracted vendor selected by the agency; amending s. 110.123, F.S.; requiring the Department of Management Services to provide certain data to the contracted vendor for the price transparency database established by the agency; requiring a contracted vendor for the state group health insurance plan to provide claims data to the vendor selected by the agency; amending ss. 20.42, 381.026, 395.602, 395.6025, 408.07, 408.18, and 465.0244, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 395.301, Florida Statutes, is amended to read:

395.301 Price transparency; itemized patient statement or bill; ~~form and content prescribed by the agency;~~ patient admission status notification.—

(1) A facility licensed under this chapter shall provide timely and accurate financial information and quality of service measures to prospective and actual patients of the facility, or to patients' survivors or legal guardians, as appropriate. Such information shall be provided in accordance with this section and rules adopted by the agency pursuant to this chapter and s. 408.05. Licensed facilities operating exclusively as state

mental health treatment facilities or as mobile surgical facilities are exempt from the requirements of this subsection.

(a) Each licensed facility shall make available to the public on its website information on payments made to that facility for defined bundles of services and procedures. The payment data must be presented and searchable in accordance with, and through a hyperlink to, the system established by the agency and its vendor using the descriptive service bundles developed under s. 408.05(3)(c). At a minimum, the facility shall provide the estimated average payment received from all payors, excluding Medicaid and Medicare, for the descriptive service bundles available at that facility and the estimated payment range for such bundles. Using plain language, comprehensible to an ordinary layperson, the facility must disclose that the information on average payments and the payment ranges is an estimate of costs that may be incurred by the patient or prospective patient and that actual costs will be based on the services actually provided to the patient. The facility shall also assist the consumer in accessing his or her health insurer's or health maintenance organization's website for information on estimated copayments, deductibles, and other cost-sharing responsibilities. The facility's website must:

1. Identify and post the names of all health insurers and health maintenance organizations for which the facility is a network provider or preferred provider and include a hyperlink to the website of each.

2. Provide information to uninsured patients and insured patients whose health insurer or health maintenance organization does not include the facility as a network provider or preferred

provider on the facility's financial assistance policy, including the application process, payment plans, and discounts, and the facility's charity care policy and collection procedures.

3. Notify patients or prospective patients that services may be provided in the health care facility by the facility as well as by other health care providers who may separately bill the patient.

4. Inform patients or prospective patients that they may request from the facility and other health care providers a more personalized estimate of charges and other information.

(b)1. Upon request, and before providing any nonemergency medical services, each licensed facility shall provide a written, good faith estimate of reasonably anticipated charges by the facility for the treatment of the patient's or prospective patient's specific condition. The facility must provide the estimate in writing to the patient or prospective patient within 7 business days after the receipt of the request and is not required to adjust the estimate for any potential insurance coverage. The estimate may be based on the descriptive service bundles developed by the agency under s. 408.05(3)(c) unless the patient or prospective patient requests a more personalized and specific estimate that accounts for the specific condition and characteristics of the patient or prospective patient. The facility shall inform the patient or prospective patient that he or she may contact his or her health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities.

2. In the estimate, the facility shall provide to the

patient or prospective patient information on the facility's financial assistance policy, including the application process, payment plans, and discounts and the facility's charity care policy and collection procedures.

3. Upon request, the facility shall notify the patient or prospective patient of any revision to the estimate.

4. In the estimate, the facility must notify the patient or prospective patient that services may be provided in the health care facility by the facility as well as by other health care providers that may separately bill the patient.

5. The facility shall take action to educate the public that such estimates are available upon request.

6. Failure to timely provide the estimate pursuant to this paragraph shall result in a fine of $500 for each instance of the facility's failure to provide the requested information.

The provision of an estimate does not preclude the actual charges from exceeding the estimate.

(c) Each facility shall make available on its website a hyperlink to the health-related data, including quality measures and statistics that are disseminated by the agency pursuant to s. 408.05. The facility shall also take action to notify the public that such information is electronically available and provide a hyperlink to the agency's website.

(d)1. Upon request, and after the patient's discharge or release from the facility, the facility must provide ~~A licensed facility not operated by the state shall notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. Within 7 days following the~~

~~patient's discharge or release from a licensed facility not operated by the state, the licensed facility providing the service shall, upon request, submit~~ to the patient~~,~~ or to the patient's survivor or legal guardian, as ~~may be~~ appropriate, an itemized statement or bill detailing in plain language, comprehensible to an ordinary layperson, the specific nature of charges or expenses incurred by the patient.~~, which in~~ The initial statement or bill ~~billing~~ shall be provided within 7 days after the patient's discharge or release from the facility or after a request for such statement or bill, whichever is later. The initial statement or bill must contain a statement of specific services received and expenses incurred by date for such items of service, enumerating in detail as prescribed by the agency the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility~~, as prescribed by the agency~~. The statement or bill must identify each item as paid, pending payment by a third party, or pending payment by the patient and must include the amount due, if applicable. If an amount is due from the patient, a due date must be included. The initial statement or bill must inform the patient or the patient's survivor or legal guardian, as appropriate, to contact the patient's insurer or health maintenance organization regarding the patient's cost-sharing responsibilities.

2. Any subsequent statement or bill provided to a patient or to the patient's survivor or legal guardian, as appropriate, relating to the episode of care must include all of the information required by subparagraph 1., with any revisions

clearly delineated.

3.~~(2)(a)~~ Each ~~such~~ statement or bill provided ~~submitted~~ pursuant to this subsection ~~section~~:

a.~~1.~~ Must ~~May not~~ include notice ~~charges~~ of hospital-based physicians and other health care providers who bill ~~if billed~~ separately.

b.~~2.~~ May not include any generalized category of expenses such as "other" or "miscellaneous" or similar categories.

c.~~3.~~ Must ~~Shall~~ list drugs by brand or generic name and not refer to drug code numbers when referring to drugs of any sort.

d.~~4.~~ Must ~~Shall~~ specifically identify physical, occupational, or speech therapy treatment as to the date, type, and length of treatment when such ~~therapy~~ treatment is a part of the statement or bill.

~~(b) Any person receiving a statement pursuant to this section shall be fully and accurately informed as to each charge and service provided by the institution preparing the statement.~~

(2)~~(3) On each itemized statement submitted pursuant to subsection (1) there shall appear the words "A FOR-PROFIT (or NOT-FOR-PROFIT or PUBLIC) HOSPITAL (or AMBULATORY SURGICAL CENTER) LICENSED BY THE STATE OF FLORIDA" or substantially similar words sufficient to identify clearly and plainly the ownership status of the licensed facility.~~ Each itemized statement or bill must prominently display the telephone ~~phone~~ number of the medical facility's patient liaison who is responsible for expediting the resolution of any billing dispute between the patient, or the patient's survivor or legal guardian ~~his or her representative~~, and the billing department.

~~(4) An itemized bill shall be provided once to the~~

~~patient's physician at the physician's request, at no charge.~~

~~(5) In any billing for services subsequent to the initial billing for such services, the patient, or the patient's survivor or legal guardian, may elect, at his or her option, to receive a copy of the detailed statement of specific services received and expenses incurred for each such item of service as provided in subsection (1).~~

~~(6) No physician, dentist, podiatric physician, or licensed facility may add to the price charged by any third party except for a service or handling charge representing a cost actually incurred as an item of expense; however, the physician, dentist, podiatric physician, or licensed facility is entitled to fair compensation for all professional services rendered. The amount of the service or handling charge, if any, shall be set forth clearly in the bill to the patient.~~

~~(7) Each licensed facility not operated by the state shall provide, prior to provision of any nonemergency medical services, a written good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition upon written request of a prospective patient. The estimate shall be provided to the prospective patient within 7 business days after the receipt of the request. The estimate may be the average charges for that diagnosis related group or the average charges for that procedure. Upon request, the facility shall notify the patient of any revision to the good faith estimate. Such estimate shall not preclude the actual charges from exceeding the estimate. The facility shall place a notice in the reception area that such information is available. Failure to provide the estimate within the provisions~~

~~established pursuant to this section shall result in a fine of $500 for each instance of the facility's failure to provide the requested information.~~

~~(8) Each licensed facility that is not operated by the state shall provide any uninsured person seeking planned nonemergency elective admission a written good faith estimate of reasonably anticipated charges for the facility to treat such person. The estimate must be provided to the uninsured person within 7 business days after the person notifies the facility and the facility confirms that the person is uninsured. The estimate may be the average charges for that diagnosis-related group or the average charges for that procedure. Upon request, the facility shall notify the person of any revision to the good faith estimate. Such estimate does not preclude the actual charges from exceeding the estimate. The facility shall also provide to the uninsured person a copy of any facility discount and charity care discount policies for which the uninsured person may be eligible. The facility shall place a notice in the reception area where such information is available. Failure to provide the estimate as required by this subsection shall result in a fine of $500 for each instance of the facility's failure to provide the requested information.~~

(3) ~~(9)~~ If a licensed facility places a patient on observation status rather than inpatient status, observation services shall be documented in the patient's discharge papers. The patient or the patient's survivor or legal guardian ~~proxy~~ shall be notified of observation services through discharge papers, which may also include brochures, signage, or other forms of communication for this purpose.

(4) ~~(10)~~ A licensed facility shall make available to a patient all records necessary for verification of the accuracy of the patient's statement or bill within 10 ~~30~~ business days after the request for such records. The records ~~verification information~~ must be made available in the facility's offices and through electronic means that comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Such records must ~~shall~~ be available to the patient before ~~prior to~~ and after payment of the statement or bill ~~or claim~~. The facility may not charge the patient for making such verification records available; however, the facility may charge its usual fee for providing copies of records as specified in s. 395.3025.

(5) ~~(11)~~ Each facility shall establish a method for reviewing and responding to questions from patients concerning the patient's itemized statement or bill. Such response shall be provided within 7 business ~~30~~ days after the date a question is received. If the patient is not satisfied with the response, the facility must provide the patient with the address and contact information of the consumer advocate as provided in s. 627.0613 ~~agency~~ to which the issue may be sent for review.

~~(12) Each licensed facility shall make available on its Internet website a link to the performance outcome and financial data that is published by the Agency for Health Care Administration pursuant to s. 408.05(3)(k). The facility shall place a notice in the reception area that the information is available electronically and the facility's Internet website address.~~

Section 2. Section 395.3012, Florida Statutes, is created to read:

395.3012 Penalties for unconscionable prices.—

(1) The agency may impose administrative fines based on the findings of the consumer advocate's investigation of billing complaints pursuant to s. 627.0613(6).

(2) The administrative fines for noncompliance with s. 395.301 are the greater of $2,500 per violation or double the amount of the original charges.

Section 3. Subsection (1) of 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.—

(1)(a) 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.

(b) Every licensed home health agency shall provide upon the request of a prospective patient or his or her legal guardian a written, good faith estimate of reasonably anticipated charges for the prospective patient for services provided by the home health agency. The home health agency must provide the estimate to the requestor within 7 business days

after receiving the request. The home health agency must inform the prospective patient, or his or her legal guardian, that he or she may contact the prospective patient's health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The home health agency must also provide information disclosing the home health agency's payment plans, discounts, and other available assistance and its collection procedures.

Section 4. Subsection (23) is added to section 400.934, Florida Statutes, to read:

400.934 Minimum standards.—As a requirement of licensure, home medical equipment providers shall:

(23) Provide upon the request of a prospective patient or his or her legal guardian a written, good faith estimate of reasonably anticipated charges for the prospective patient for services provided by the home medical equipment provider. The home medical equipment provider must provide the estimate to the requestor within 7 business days after receiving the request. The home medical equipment provider must inform the prospective patient, or his or her legal guardian, that he or she may contact the prospective patient's health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The home medical equipment provider must also provide information disclosing the home medical equipment provider's payment plans, discounts, and other available assistance and its collection procedures.

Section 5. Section 408.05, Florida Statutes, is amended to read:

408.05 Florida Center for Health Information and

Transparency ~~Policy Analysis~~.—

(1) ESTABLISHMENT.—The agency shall establish and maintain a Florida Center for Health Information and Transparency to collect, compile, coordinate, analyze, index, and disseminate ~~Policy Analysis. The center shall establish a comprehensive health information system to provide for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant~~ health-related data and statistics. The center shall be staffed as necessary ~~with public health experts, biostatisticians, information system analysts, health policy experts, economists, and other staff necessary~~ to carry out its functions.

(2) HEALTH-RELATED DATA.—The ~~comprehensive health information system operated by the~~ Florida Center for Health Information and Transparency ~~Policy Analysis~~ shall identify ~~the best~~ available data sets, compile new data when specifically authorized, ~~data sources~~ and promote the use ~~coordinate the compilation~~ of extant health-related data and statistics. The center must maintain any data sets in existence before July 1, 2016, unless such data sets duplicate information that is readily available from other credible sources, and may ~~and purposefully~~ collect or compile data on the following:

~~(a) The extent and nature of illness and disability of the state population, including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality.~~

~~(b) The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state.~~

~~(c) Environmental, social, and other health hazards.~~

~~(d) Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status.~~

(a) ~~(c)~~ Health resources, including licensed ~~physicians, dentists, nurses, and other~~ health care practitioners ~~professionals~~, by specialty and type of practice. Such data shall include information collected by the Department of Health pursuant to ss. 458.3191 and 459.0081.

(b) Health service inventories, including ~~and~~ acute care, long-term care, and other institutional care facilities ~~facility supplies~~ and specific services provided by hospitals, nursing homes, home health agencies, and other licensed health care facilities.

(c) ~~(f)~~ Service utilization for licensed health care facilities ~~of health care by type of provider~~.

(d) ~~(g)~~ Health care costs and financing, including trends in health care prices and costs, the sources of payment for health care services, and federal, state, and local expenditures for health care.

~~(h) Family formation, growth, and dissolution.~~

(e) ~~(i)~~ The extent of public and private health insurance coverage in this state.

(f) ~~(j)~~ Specific quality-of-care initiatives involving ~~The quality of care provided by~~ various health care providers when extant data is not adequate to achieve the objectives of the initiatives.

(3) ~~COMPREHENSIVE~~ HEALTH INFORMATION TRANSPARENCY ~~SYSTEM~~.—In order to disseminate and facilitate the availability of

~~produce~~ comparable and uniform health information ~~and statistics for the development of policy recommendations~~, the agency shall perform the following functions:

(a) Collect and compile information on and coordinate the activities of state agencies involved in providing ~~the design and implementation of the comprehensive~~ health information to consumers ~~system~~.

(b) Promote data sharing through dissemination of state-collected health data by making such data available, transferable, and readily usable ~~Undertake research, development, and evaluation respecting the comprehensive health information system~~.

(c) Contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures and allows for price comparison. The Internet-based platform must allow a consumer to search by condition or service bundles that are comprehensible to an ordinary layperson and may not require registration, a security password, or user identification. The vendor must be a nonprofit research institute that is qualified under s. 1874 of the Social Security Act to receive Medicare claims data and that receives claims data from multiple private insurers nationwide. The vendor must have:

1. A national database consisting of at least 15 billion claim lines of administrative claims data from multiple payors capable of being expanded by adding third-party payors, including employers with health plans covered by the Employee Retirement Income Security Act of 1974 (ERISA).

2. A well-developed methodology for analyzing claims data

within defined service bundles.

3. A bundling methodology that is available in the public domain to allow for consistency and comparison of state and national benchmarks with local regions and specific providers.

~~(c) Review the statistical activities of state agencies to ensure that they are consistent with the comprehensive health information system.~~

(d) Develop written agreements with local, state, and federal agencies to facilitate ~~for~~ the sharing of data related to health care ~~health-care-related data or using the facilities and services of such agencies. State agencies, local health councils, and other agencies under state contract shall assist the center in obtaining, compiling, and transferring health-care-related data maintained by state and local agencies. Written agreements must specify the types, methods, and periodicity of data exchanges and specify the types of data that will be transferred to the center~~.

(e) Establish by rule the types of data collected, compiled, processed, used, or shared. ~~Decisions regarding center data sets should be made based on consultation with the State Consumer Health Information and Policy Advisory Council and other public and private users regarding the types of data which should be collected and their uses. The center shall establish standardized means for collecting health information and statistics under laws and rules administered by the agency.~~

(f) Consult with contracted vendors, the State Consumer Health Information and Policy Advisory Council, and other public and private users regarding the types of data that should be collected and the use of such data.

(g) Monitor data collection procedures and test data quality to facilitate the dissemination of data that is accurate, valid, reliable, and complete.

~~(f) Establish minimum health-care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data. The agency shall periodically review ongoing health care data collections of the Department of Health and other state agencies to determine if the collections are being conducted in accordance with the established minimum sets of data.~~

~~(g) Establish advisory standards to ensure the quality of health statistical and epidemiological data collection, processing, and analysis by local, state, and private organizations.~~

~~(h) Prescribe standards for the publication of health-care-related data reported pursuant to this section which ensure the reporting of accurate, valid, reliable, complete, and comparable data. Such standards should include advisory warnings to users of the data regarding the status and quality of any data reported by or available from the center.~~

(h) ~~(i)~~ Develop ~~Prescribe standards for the maintenance and preservation of the center's data. This should include~~ methods for archiving data, retrieval of archived data, and data editing and verification.

~~(j) Ensure that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests.~~

(i) ~~(k)~~ Make ~~Develop, in conjunction with the State Consumer~~

~~Health Information and Policy Advisory Council, and implement a long-range plan for making~~ available health care quality measures ~~and financial data~~ that will allow consumers to compare outcomes and other performance measures for health care services. ~~The health care quality measures and financial data the agency must make available include, but are not limited to, pharmaceuticals, physicians, health care facilities, and health plans and managed care entities. The agency shall update the plan and report on the status of its implementation annually. The agency shall also make the plan and status report available to the public on its Internet website. As part of the plan, the agency shall identify the process and timeframes for implementation, barriers to implementation, and recommendations of changes in the law that may be enacted by the Legislature to eliminate the barriers. As preliminary elements of the plan, the agency shall:~~

~~1. Make available patient-safety indicators, inpatient quality indicators, and performance outcome and patient charge data collected from health care facilities pursuant to s. 408.061(1)(a) and (2). The terms "patient-safety indicators" and "inpatient quality indicators" have the same meaning as that ascribed by the Centers for Medicare and Medicaid Services, an accrediting organization whose standards incorporate comparable regulations required by this state, or a national entity that establishes standards to measure the performance of health care providers, or by other states. The agency shall determine which conditions, procedures, health care quality measures, and patient charge data to disclose based upon input from the council. When determining which conditions and procedures are to~~

be disclosed, the council and the agency shall consider variation in costs, variation in outcomes, and magnitude of variations and other relevant information. When determining which health care quality measures to disclose, the agency:

a. Shall consider such factors as volume of cases; average patient charges; average length of stay; complication rates; mortality rates; and infection rates, among others, which shall be adjusted for case mix and severity, if applicable.

b. May consider such additional measures that are adopted by the Centers for Medicare and Medicaid Studies, an accrediting organization whose standards incorporate comparable regulations required by this state, the National Quality Forum, the Joint Commission on Accreditation of Healthcare Organizations, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, or a similar national entity that establishes standards to measure the performance of health care providers, or by other states.

When determining which patient charge data to disclose, the agency shall include such measures as the average of undiscounted charges on frequently performed procedures and preventive diagnostic procedures, the range of procedure charges from highest to lowest, average net revenue per adjusted patient day, average cost per adjusted patient day, and average cost per admission, among others.

2. Make available performance measures, benefit design, and premium cost data from health plans licensed pursuant to chapter 627 or chapter 641. The agency shall determine which health care quality measures and member and subscriber cost data to

disclose, based upon input from the council. When determining which data to disclose, the agency shall consider information that may be required by either individual or group purchasers to assess the value of the product, which may include membership satisfaction, quality of care, current enrollment or membership, coverage areas, accreditation status, premium costs, plan costs, premium increases, range of benefits, copayments and deductibles, accuracy and speed of claims payment, credentials of physicians, number of providers, names of network providers, and hospitals in the network. Health plans shall make available to the agency such data or information that is not currently reported to the agency or the office.

3. Determine the method and format for public disclosure of data reported pursuant to this paragraph. The agency shall make its determination based upon input from the State Consumer Health Information and Policy Advisory Council. At a minimum, the data shall be made available on the agency's Internet website in a manner that allows consumers to conduct an interactive search that allows them to view and compare the information for specific providers. The website must include such additional information as is determined necessary to ensure that the website enhances informed decisionmaking among consumers and health care purchasers, which shall include, at a minimum, appropriate guidance on how to use the data and an explanation of why the data may vary from provider to provider.

4. Publish on its website undiscounted charges for no fewer than 150 of the most commonly performed adult and pediatric procedures, including outpatient, inpatient, diagnostic, and preventative procedures.

~~(4) TECHNICAL ASSISTANCE.—~~

~~(a) The center shall provide technical assistance to persons or organizations engaged in health planning activities in the effective use of statistics collected and compiled by the center. The center shall also provide the following additional technical assistance services:~~

~~1. Establish procedures identifying the circumstances under which, the places at which, the persons from whom, and the methods by which a person may secure data from the center, including procedures governing requests, the ordering of requests, timeframes for handling requests, and other procedures necessary to facilitate the use of the center's data. To the extent possible, the center should provide current data timely in response to requests from public or private agencies.~~

~~2. Provide assistance to data sources and users in the areas of database design, survey design, sampling procedures, statistical interpretation, and data access to promote improved health care related data sets.~~

~~3. Identify health care data gaps and provide technical assistance to other public or private organizations for meeting documented health care data needs.~~

~~4. Assist other organizations in developing statistical abstracts of their data sets that could be used by the center.~~

~~5. Provide statistical support to state agencies with regard to the use of databases maintained by the center.~~

~~6. To the extent possible, respond to multiple requests for information not currently collected by the center or available from other sources by initiating data collection.~~

~~7. Maintain detailed information on data maintained by~~

~~other local, state, federal, and private agencies in order to advise those who use the center of potential sources of data which are requested but which are not available from the center.~~

~~8. Respond to requests for data which are not available in published form by initiating special computer runs on data sets available to the center.~~

~~9. Monitor innovations in health information technology, informatics, and the exchange of health information and maintain a repository of technical resources to support the development of a health information network.~~

~~(b) The agency shall administer, manage, and monitor grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information network. Any grant contract shall be evaluated to ensure the effective outcome of the health information project.~~

~~(c) The agency shall initiate, oversee, manage, and evaluate the integration of health care data from each state agency that collects, stores, and reports on health care issues and make that data available to any health care practitioner through a state health information network.~~

~~(5) PUBLICATIONS; REPORTS; SPECIAL STUDIES.—The center shall provide for the widespread dissemination of data which it collects and analyzes. The center shall have the following publication, reporting, and special study functions:~~

~~(a) The center shall publish and make available periodically to agencies and individuals health statistics publications of general interest, including health plan consumer~~

~~reports and health maintenance organization member satisfaction surveys; publications providing health statistics on topical health policy issues; publications that provide health status profiles of the people in this state; and other topical health statistics publications.~~

(j) ~~(b) The center shall publish,~~ Make available~~, and disseminate, promptly and as widely as practicable,~~ the results of special health surveys, health care research, and health care evaluations conducted or supported under this section. ~~Any publication by the center must include a statement of the limitations on the quality, accuracy, and completeness of the data.~~

~~(c) The center shall provide indexing, abstracting, translation, publication, and other services leading to a more effective and timely dissemination of health care statistics.~~

~~(d) The center shall be responsible for publishing and disseminating an annual report on the center's activities.~~

~~(e) The center shall be responsible, to the extent resources are available, for conducting a variety of special studies and surveys to expand the health care information and statistics available for health policy analyses, particularly for the review of public policy issues. The center shall develop a process by which users of the center's data are periodically surveyed regarding critical data needs and the results of the survey considered in determining which special surveys or studies will be conducted. The center shall select problems in health care for research, policy analyses, or special data collections on the basis of their local, regional, or state importance; the unique potential for definitive research on the~~

~~problem; and opportunities for application of the study findings.~~

(4) ~~(6)~~ PROVIDER DATA REPORTING.—This section does not confer on the agency the power to demand or require that a health care provider or professional furnish information, records of interviews, written reports, statements, notes, memoranda, or data other than as expressly required by law. The agency may not establish an all-payor claims database or a comparable database without express legislative authority.

(5) ~~(7)~~ BUDGET; FEES.—

(a) The Legislature intends that funding for the Florida Center for Health Information and Transparency ~~Policy Analysis~~ be appropriated from the General Revenue Fund.

(b) The Florida Center for Health Information and Transparency ~~Policy Analysis~~ may apply for and receive and accept grants, gifts, and other payments, including property and services, from any governmental or other public or private entity or person and make arrangements as to the use of same, including the undertaking of special studies and other projects relating to health-care-related topics. Funds obtained pursuant to this paragraph may not be used to offset annual appropriations from the General Revenue Fund.

(c) The center may charge such reasonable fees for services as the agency prescribes by rule. The established fees may not exceed the reasonable cost for such services. Fees collected may not be used to offset annual appropriations from the General Revenue Fund.

(6) ~~(8)~~ STATE CONSUMER HEALTH INFORMATION AND POLICY ADVISORY COUNCIL.—

(a) There is established in the agency the State Consumer Health Information and Policy Advisory Council to assist the center ~~in reviewing the comprehensive health information system, including the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities and to recommend improvements for purposes of public health, policy analysis, and transparency of consumer health care information~~. The council consists ~~shall consist~~ of the following members:

1. An employee of the Executive Office of the Governor, to be appointed by the Governor.

2. An employee of the Office of Insurance Regulation, to be appointed by the director of the office.

3. An employee of the Department of Education, to be appointed by the Commissioner of Education.

4. Ten persons, to be appointed by the Secretary of Health Care Administration, representing other state and local agencies, state universities, business and health coalitions, local health councils, professional health-care-related associations, consumers, and purchasers.

(b) Each member of the council shall be appointed to serve for a term of 2 years following the date of appointment~~, except the term of appointment shall end 3 years following the date of appointment for members appointed in 2003, 2004, and 2005~~. A vacancy shall be filled by appointment for the remainder of the term, and each appointing authority retains the right to reappoint members whose terms of appointment have expired.

(c) The council may meet at the call of its chair, at the

request of the agency, or at the request of a majority of its membership, but the council must meet at least quarterly.

(d) Members shall elect a chair and vice chair annually.

(e) A majority of the members constitutes a quorum, and the affirmative vote of a majority of a quorum is necessary to take action.

(f) The council shall maintain minutes of each meeting and shall make such minutes available to any person.

(g) Members of the council shall serve without compensation but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(h) The council's duties and responsibilities include, but are not limited to, the following:

1. To develop a mission statement, goals, and a plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities.

2. To develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data.

3. To create ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the council.

(7) ~~(9)~~ APPLICATION TO OTHER AGENCIES. ~~Nothing in~~ This section does not ~~shall~~ limit, restrict, affect, or control the collection, analysis, release, or publication of data by any state agency pursuant to its statutory authority, duties, or responsibilities.

Section 6. Subsection (1) of section 408.061, Florida Statutes, is amended to read:

408.061 Data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.—

(1) The agency shall require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the agency's duties and to facilitate transparency in health care pricing data and quality measures. Specifications for data to be collected under this section shall be developed by the agency and applicable contract vendors, with the assistance of technical advisory panels including representatives of affected entities, consumers, purchasers, and such other interested parties as may be determined by the agency.

(a) Data submitted by health care facilities, including the facilities as defined in chapter 395, shall include, but are not limited to: case-mix data, patient admission and discharge data, hospital emergency department data which shall include the number of patients treated in the emergency department of a licensed hospital reported by patient acuity level, data on hospital-acquired infections as specified by rule, data on complications as specified by rule, data on readmissions as specified by rule, with patient and provider-specific identifiers included, actual charge data by diagnostic groups or other bundled groupings as specified by rule, financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, depreciation expenses based on the expected useful life of the property and equipment involved, and demographic data. The agency shall adopt nationally recognized

risk adjustment methodologies or software consistent with the standards of the Agency for Healthcare Research and Quality and as selected by the agency for all data submitted as required by this section. Data may be obtained from documents such as, but not limited to: leases, contracts, debt instruments, itemized patient statements or bills, medical record abstracts, and related diagnostic information. Reported data elements shall be reported electronically in accordance with rule 59E-7.012, Florida Administrative Code. Data submitted shall be certified by the chief executive officer or an appropriate and duly authorized representative or employee of the licensed facility that the information submitted is true and accurate.

(b) Data to be submitted by health care providers may include, but are not limited to: professional organization and specialty board affiliations, Medicare and Medicaid participation, types of services offered to patients, actual charges to patients as specified by rule, amount of revenue and expenses of the health care provider, and such other data which are reasonably necessary to study utilization patterns. Data submitted shall be certified by the appropriate duly authorized representative or employee of the health care provider that the information submitted is true and accurate.

(c) Data to be submitted by health insurers may include, but are not limited to: claims, payments to health care facilities and health care providers as specified by rule, premium, administration, and financial information. Data submitted shall be certified by the chief financial officer, an appropriate and duly authorized representative, or an employee of the insurer that the information submitted is true and

accurate.

(d) Data required to be submitted by health care facilities, health care providers, or health insurers may ~~shall~~ not include specific provider contract reimbursement information. However, such specific provider reimbursement data shall be reasonably available for onsite inspection by the agency as is necessary to carry out the agency's regulatory duties. Any such data obtained by the agency as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) A requirement to submit data shall be adopted by rule if the submission of data is being required of all members of any type of health care facility, health care provider, or health insurer. Rules are not required, however, for the submission of data for a special study mandated by the Legislature or when information is being requested for a single health care facility, health care provider, or health insurer.

Section 7. Section 456.0575, Florida Statutes, is amended to read:

456.0575 Duty to notify patients.—

(1) Every licensed health care practitioner 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 shall not constitute an acknowledgment of admission of liability, nor can such notifications be introduced as evidence.

(2) Every licensed health care practitioner must provide upon request by a patient, before providing any nonemergency medical services in a facility licensed under chapter 395, a written, good faith estimate of reasonably anticipated charges to treat the patient's condition at the licensed facility. The health care practitioner must provide the estimate to the patient within 7 business days after receiving the request and is not required to adjust the estimate for any potential insurance coverage. The health care practitioner must inform the patient that he or she may contact his or her health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The health care practitioner must provide information to uninsured patients and insured patients for whom the practitioner is not a network provider or preferred provider which discloses the practitioner's financial assistance policy, including the application process, payment plans, discounts, and other available assistance; the practitioner's charity care policy; and the practitioner's collection procedures. Such estimate does not preclude the actual charges from exceeding the estimate. Failure to provide the estimate in accordance with this subsection, without good cause, within the 7 business days shall result in disciplinary action against the health care practitioner and a fine of $500 for each instance of the practitioner's failure to provide the requested estimate.

Section 8. Paragraph (oo) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which

the disciplinary actions specified in subsection (2) may be taken:

(oo) Failure to comply with fair billing practices pursuant to s. 627.0613(6).

Section 9. Section 627.0613, Florida Statutes, is amended to read:

627.0613 Consumer advocate.—The Chief Financial Officer must appoint a consumer advocate who must represent the general public of the state before the department, ~~and~~ the office, and other state agencies, as required by this section. The consumer advocate must report directly to the Chief Financial Officer, but is not otherwise under the authority of the department or of any employee of the department. The consumer advocate has such powers as are necessary to carry out the duties of the office of consumer advocate, including, but not limited to, the powers to:

(1) Recommend to the department or office, by petition, the commencement of any proceeding or action; appear in any proceeding or action before the department or office; or appear in any proceeding before the Division of Administrative Hearings relating to subject matter under the jurisdiction of the department or office.

(2) Report to the Agency for Health Care Administration and to the Department of Health any findings resulting from investigation of unresolved complaints concerning the billing practices of any health care facility licensed under chapter 395 or any health care practitioner subject to chapter 456.

(3) ~~(2)~~ Have access to and use of all files, records, and data of the department or office.

(4) Have access to any files, records, and data of the

Agency for Health Care Administration and the Department of Health which are necessary for the investigations authorized by subsection (6).

(5) ~~(3)~~ Examine rate and form filings submitted to the office, hire consultants as necessary to aid in the review process, and recommend to the department or office any position deemed by the consumer advocate to be in the public interest.

(6) Maintain a process for receiving and investigating complaints from insured and uninsured patients of health care facilities licensed under chapter 395 and health care practitioners subject to chapter 456 concerning billing practices. Investigations by the office of the consumer advocate shall be limited to determining compliance with the following requirements:

(a) The patient was informed before a nonemergency procedure of expected payments related to the procedure as provided in s. 395.301, contact information for health insurers or health maintenance organizations to determine specific cost-sharing responsibilities, and the expected involvement in the procedure of other providers who may bill independently.

(b) The patient was informed of policies and procedures to qualify for discounted charges.

(c) The patient was informed of collection procedures and given the opportunity to participate in an extended payment schedule.

(d) The patient was given a written, personal, and itemized estimate upon request as provided in ss. 395.301 and 456.0575.

(e) The statement or bill delivered to the patient was accurate and included all information required pursuant to s.

395.301.

(f) The billed amounts were fair charges. As used in this paragraph, the term "fair charges" means the common and frequent range of charges for patients who are similarly situated requiring the same or similar medical services.

(7) Provide mediation between providers and patients to resolve billing complaints and negotiate arrangements for extended payment schedules.

(8)~~(4)~~ Prepare an annual budget for presentation to the Legislature by the department, which budget must be adequate to carry out the duties of the office of consumer advocate.

Section 10. Section 627.6385, Florida Statutes, is created to read:

627.6385 Disclosures to policyholders; calculations of cost sharing.—

(1) Each health insurer shall make available on its website:

(a) A method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities for health care services and procedures. Such method of making an estimate shall be based on service bundles established pursuant to s. 408.05(3)(c). Estimates do not preclude the actual copayment, coinsurance percentage, or deductible, whichever is applicable, from exceeding the estimate.

1. Estimates shall be calculated according to the policy and known plan usage during the coverage period.

2. Estimates shall be made available based on providers that are in-network or out-of-network.

3. A policyholder must be able to create estimates by any

combination of the service bundles established pursuant to s. 408.05(3)(c) or by a specified provider or a comparison of providers.

(b) A method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities based on a personalized estimate of charges received from a facility pursuant to s. 395.301 or a practitioner pursuant to s. 456.0575.

(c) A hyperlink to the health information, including, but not limited to, service bundles and quality of care information, which is disseminated by the Agency for Health Care Administration pursuant to s. 408.05(3).

(2) Each health insurer shall include in every policy delivered or issued for delivery to any person in the state or in materials provided as required by s. 627.64725 notice that the information required by this section is available electronically and the address of the website where the information can be accessed.

(3) Each health insurer that participates in the state group health insurance plan created pursuant to s. 110.123 or Medicaid managed care pursuant to part IV of chapter 409 shall provide all claims data to the fullest extent possible to the contracted vendor selected by the Agency for Health Care Administration under s. 408.05(3)(c).

Section 11. Subsection (6) of section 641.54, Florida Statutes, is amended, present subsection (7) of that section is redesignated as subsection (8) and amended, and a new subsection (7) is added to that section, to read:

641.54 Information disclosure.—

(6) Each health maintenance organization shall make available to its subscribers on its website or by request the estimated copayment ~~copay~~, coinsurance percentage, or deductible, whichever is applicable, for any covered services as described by the searchable bundles established on a consumer-friendly, Internet-based platform pursuant to s. 408.05(3)(c) or as described in a personalized estimate received from a facility pursuant to s. 395.301 or a practitioner pursuant to s. 456.0575, the status of the subscriber's maximum annual out-of-pocket payments for a covered individual or family, and the status of the subscriber's maximum lifetime benefit. Such estimate does ~~shall~~ not preclude the actual copayment ~~copay~~, coinsurance percentage, or deductible, whichever is applicable, from exceeding the estimate.

(7) Each health maintenance organization that participates in the state group health insurance plan created pursuant to s. 110.123 or Medicaid managed care pursuant to part IV of chapter 409 shall provide all claims data to the fullest extent possible to the contracted vendor selected by the Agency for Health Care Administration under s. 408.05(3)(c).

(8)~~(7)~~ Each health maintenance organization shall make available on its ~~Internet~~ website a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the Agency for Health Care Administration pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~ and shall include in every policy delivered or issued for delivery to any person in the state or any materials provided as required by s. 627.64725 notice that such information is available electronically and the address of its Internet website.

Section 12. Paragraph (n) is added to subsection (2) of section 409.967, Florida Statutes, to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(n) *Transparency.*—Managed care plans shall comply with ss. 627.6385(3) and 641.54(7).

Section 13. Paragraph (d) of subsection (3) of section 110.123, Florida Statutes, is amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(d)1. Notwithstanding ~~the provisions of~~ chapter 287 and the authority of the department, for the purpose of protecting the health of, and providing medical services to, state employees participating in the state group insurance program, the department may contract to retain the services of professional administrators for the state group insurance program. The agency shall follow good purchasing practices of state procurement to the extent practicable under the circumstances.

2. Each vendor in a major procurement, and any other vendor if the department deems it necessary to protect the state's financial interests, shall, at the time of executing any contract with the department, post an appropriate bond with the department in an amount determined by the department to be adequate to protect the state's interests but not higher than the full amount estimated to be paid annually to the vendor under the contract.

3. Each major contract entered into by the department pursuant to this section shall contain a provision for payment of liquidated damages to the department for material noncompliance by a vendor with a contract provision. The department may require a liquidated damages provision in any contract if the department deems it necessary to protect the state's financial interests.

4. Section ~~The provisions of s.~~ 120.57(3) applies ~~apply~~ to the department's contracting process, except:

a. A formal written protest of any decision, intended decision, or other action subject to protest shall be filed within 72 hours after receipt of notice of the decision, intended decision, or other action.

b. As an alternative to any provision of s. 120.57(3), the department may proceed with the bid selection or contract award process if the director of the department sets forth, in writing, particular facts and circumstances which demonstrate the necessity of continuing the procurement process or the contract award process in order to avoid a substantial disruption to the provision of any scheduled insurance services.

5. The department shall make arrangements as necessary to provide claims data of the state group health insurance plan to the contracted vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

6. Each contracted vendor for the state group health insurance plan shall provide claims data to the fullest extent possible to the vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

Section 14. Subsection (3) of section 20.42, Florida

Statutes, is amended to read:

20.42 Agency for Health Care Administration.—

(3) The department shall be the chief health policy and planning entity for the state. The department is responsible for health facility licensure, inspection, and regulatory enforcement; investigation of consumer complaints related to health care facilities and managed care plans; the implementation of the certificate of need program; the operation of the Florida Center for Health Information and Transparency ~~Policy Analysis~~; the administration of the Medicaid program; the administration of the contracts with the Florida Healthy Kids Corporation; the certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641; and any other duties prescribed by statute or agreement.

Section 15. Paragraph (c) of subsection (4) of section 381.026, Florida Statutes, is amended to read:

381.026 Florida Patient's Bill of Rights and Responsibilities.—

(4) RIGHTS OF PATIENTS.—Each health care facility or provider shall observe the following standards:

(c) *Financial information and disclosure.*—

1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a representative of the health care facility full information and necessary counseling on the availability of known financial resources for the patient's health care.

2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for

Medicare, before treatment, whether the health care provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

3. A primary care provider may publish a schedule of charges for the medical services that the provider offers to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office and must include, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.

4. If a primary care provider publishes a schedule of charges pursuant to subparagraph 3., he or she must continually post it at all times for the duration of active licensure in this state when primary care services are provided to patients. If a primary care provider fails to post the schedule of charges in accordance with this subparagraph, the provider shall be required to pay any license fee and comply with any continuing

education requirements for which an exemption was received.

5. A health care provider or a health care facility shall, upon request, furnish a person, before the provision of medical services, a reasonable estimate of charges for such services. The health care provider or the health care facility shall provide an uninsured person, before the provision of a planned nonemergency medical service, a reasonable estimate of charges for such service and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. Such estimates by a primary care provider must be consistent with the schedule posted under subparagraph 3. Estimates shall, to the extent possible, be written in language comprehensible to an ordinary layperson. Such reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.

6. Each licensed facility, except a facility operating exclusively as a state mental health treatment facility or as a mobile surgical facility, ~~not operated by the state~~ shall make available to the public on its Internet website or by other electronic means a description of and a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the agency pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~. The facility shall place a notice in the reception area that such information is available electronically and the website address. The licensed facility may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's statement or bill

may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for eligible patients based upon the patient's ability to pay.

7. A patient has the right to receive a copy of an itemized statement or bill upon request. A patient has a right to be given an explanation of charges upon request.

Section 16. Paragraph (e) of subsection (2) of section 395.602, Florida Statutes, is amended to read:

395.602 Rural hospitals.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Rural hospital" means an acute care hospital licensed under this chapter, having 100 or fewer licensed beds and an emergency room, which is:

1. The sole provider within a county with a population density of up to 100 persons per square mile;

2. An acute care hospital, in a county with a population density of up to 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;

3. A hospital supported by a tax district or subdistrict whose boundaries encompass a population of up to 100 persons per square mile;

4. A hospital with a service area that has a population of up to 100 persons per square mile. As used in this subparagraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from

the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the agency; or

5. A hospital designated as a critical access hospital, as defined in s. 408.07.

Population densities used in this paragraph must be based upon the most recently completed United States census. A hospital that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this paragraph shall be granted such designation upon application, including supporting documentation, to the agency. A hospital that was licensed as a rural hospital during the 2010-2011 or 2011-2012 fiscal year shall continue to be a rural hospital from the date of designation through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room.

Section 17. Section 395.6025, Florida Statutes, is amended to read:

395.6025 Rural hospital replacement facilities.—Notwithstanding ~~the provisions of~~ s. 408.036, a hospital defined as a statutory rural hospital in accordance with s. 395.602, or a not-for-profit operator of rural hospitals, is not required to obtain a certificate of need for the construction of a new hospital located in a county with a population of at least

15,000 but no more than 18,000 and a density of fewer ~~less~~ than 30 persons per square mile, or a replacement facility, provided that the replacement, or new, facility is located within 10 miles of the site of the currently licensed rural hospital and within the current primary service area. As used in this section, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the Agency for Health Care Administration.

Section 18. Subsection (43) of section 408.07, Florida Statutes, is amended to read:

408.07 Definitions.—As used in this chapter, with the exception of ss. 408.031-408.045, the term:

(43) "Rural hospital" means an acute care hospital licensed under chapter 395, having 100 or fewer licensed beds and an emergency room, and which is:

(a) The sole provider within a county with a population density of no greater than 100 persons per square mile;

(b) An acute care hospital, in a county with a population density of no greater than 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from another acute care hospital within the same county;

(c) A hospital supported by a tax district or subdistrict whose boundaries encompass a population of 100 persons or fewer per square mile;

(d) A hospital with a service area that has a population of

100 persons or fewer per square mile. As used in this paragraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the Agency for Health Care Administration; or

(e) A critical access hospital.

Population densities used in this subsection must be based upon the most recently completed United States census. A hospital that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2015, if the hospital continues to have 100 or fewer licensed beds and an emergency room. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this subsection shall be granted such designation upon application, including supporting documentation, to the Agency for Health Care Administration.

Section 19. Paragraph (a) of subsection (4) of section 408.18, Florida Statutes, is amended to read:

408.18 Health Care Community Antitrust Guidance Act; antitrust no-action letter; market-information collection and education.—

(4)(a) Members of the health care community who seek antitrust guidance may request a review of their proposed business activity by the Attorney General's office. In conducting its review, the Attorney General's office may seek

whatever documentation, data, or other material it deems necessary from the Agency for Health Care Administration, the Florida Center for Health Information and Transparency ~~Policy Analysis~~, and the Office of Insurance Regulation of the Financial Services Commission.

Section 20. Section 465.0244, Florida Statutes, is amended to read:

465.0244 Information disclosure.—Every pharmacy shall make available on its ~~Internet~~ website a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the Agency for Health Care Administration pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~ and shall place in the area where customers receive filled prescriptions notice that such information is available electronically and the address of its Internet website.

Section 21. This act shall take effect July 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 Appropriations

BILL:	SB 1496
INTRODUCER:	Senators Bradley and Gaetz
SUBJECT:	Transparency in Health Care
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 1496 increases the transparency and availability of health care pricing and quality of service information. The Agency for Health Care Administration (AHCA) is required to contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures to facilitate price comparison of typical health care services provided in hospitals and ambulatory surgery centers (ASCs). Quality indicators for services at the facilities will also be made available to the consumer to facilitate health care decision making.

Under the bill, hospitals and ASCs are required to provide access to the searchable service bundles on their website. Consumers will be presented with estimated average payment and estimated payment ranges for each service bundle, by facility, facilities within geographic boundaries, and nationally. A hospital or ASC must notify consumers of other health care providers that may bill separately from the facility, as well as information about the facility's financial assistance policies and collection procedures.

The hospital's and ASC's website must also provide hyperlinks to the websites of insurers and health maintenance organizations (HMOs) for which the facility is in-network or a preferred provider to enable an insured patient to research cost-sharing responsibilities for the service bundle. Insurers and HMOs are required to provide on their websites a method for policy holders to estimate their cost-sharing responsibilities by service bundle, based on the insured's policy and known usage. These estimates must include both in-network and out-of-network providers. Insurers and HMOs are also required to provide hyperlinks on their website to the AHCA's performance outcome and financial data.

Consumers may request personalized good faith estimates of charges for non-emergency medical services from hospitals, ASCs, and health care practitioners relating to medical services provided in the hospital or ASC. The bill also requires nursing homes, home health agencies, and home

medical equipment providers to provide consumers with good-faith estimates of medical services and supplies. These good-faith estimates must be provided to the consumer within seven days after the request. Information must also be provided about the health care provider's financial assistance policies and collection procedures.

A patient may also request an itemized bill or statement from the hospital and ASC after discharge. The hospital or ASC must provide an itemized bill or statement within seven days that is specific, written in plain language, and identifies all services provided by the facility, as well as rates charged, amounts due, and the payment status. The itemized bill or statement must inform the patient to contact his or her insurer regarding the patient's share of costs. The facility must provide records to verify the bill or statement upon request.

The bill requires the consumer advocate in the Department of Financial Services (DFS) to receive and investigate complaints from insured and uninsured patients concerning billing practices. If, after investigating a complaint, the consumer advocate determines the billing practices and charges were unfair, the consumer advocate will report these findings to the AHCA and the Department of Health (DOH) for regulatory and disciplinary action. The bill provides for penalties for unconscionable prices. The consumer advocate is also authorized to mediate billing complaints and negotiate payment arrangements.

The bill requires health insurers and HMOs that participate in the state group health insurance plan or Medicaid managed care to submit claims data to the vendor selected by the AHCA. The bill grants a premium tax credit of 0.05 percent to health insurers and HMOs that submit data to the vendor and establishes a tax credit of $50 per employee per submission, up to $500,000, which may be used against either Florida's sales and use tax or corporate income tax for employers with plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) that submit qualifying health care claims information to the vendor selected by the AHCA.

The AHCA estimates the bill will have a negative recurring fiscal impact of approximately $2.7 million in general revenue. Estimates of the fiscal impact of the tax credits created under the bill and of the new duties of the consumer advocate within the DFS are not available at this time. See Section V.

The bill has an effective date of July 1, 2016, except as otherwise provided in the bill.

II. Present Situation:

Health Care Price and Quality Transparency

In general, the term "transparency," when applied to health care, refers to the ability of a patient or the public to investigate and compare different health care providers for pricing and quality of care for one or more procedures. Although simple sounding, health care price transparency is difficult to implement due to legal challenges, the various manners in which health care is provided, and the various manners in which health care costs are paid. Demonstrating this

difficulty, the Health Care Incentives Improvement Institute gave an F grade to 45 out of 50 states, including Florida, in its 2015 Report Card on State Price Transparency Laws.[1, 2]

Some difficulties in implementing health care price transparency include:

- Legal barriers, including the confidentiality of some contractual information between health care providers and insurers, as well and health insurer trade secret information;[3]
- Difficulty in determining who will be providing care and whether or not all providers are in a patient's insurance network;[4]
- General confusion over billing practices;[5] and
- Difficulty drawing comparisons between patients' particular situations.[6]

Common Definitions in Health Care Pricing

Another basic difficulty in interpreting health care pricing is understanding the definition of many terms. Some common definitions include:

- "Charge," which means the dollar amount a provider charges for services rendered, before any contracted discounts are applied; a charge can be different from the amount paid;
- "Cost," the definition of which varies by the party incurring the expense:
  - To the patient, cost is the amount payable out of pocket for health care services;
  - To the provider, cost is the expense (direct and indirect) incurred to deliver health care services to patients;
  - To the insurer, cost is the amount payable to the provider (or reimbursable to the patient) for services rendered;
  - To the employer, cost is the expense related to providing health benefits (premiums or claims paid);
- "Price," which means the total amount a provider expects to be paid by payers and/or patients for health care services; and
- "Out-of-pocket payment," which means the portion of total payment for medical services and treatment for which the patient is responsible, including copayments, coinsurance, and deductibles.[7]

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[1] Health Care Incentives Improvement Institute, *Report Card on State Price Transparency Laws*, (July 2015), *available at* http://www.hci3.org/wp-content/uploads/files/files/2015_Report_PriceTransLaws_06.pdf (last visited on Jan. 14, 2016).
[2] Only one state, New Hampshire, received an A rating. Colorado and Maine received B's, and Vermont and Virginia received C's.
[3] Id.
[4] Anne Weiss and Susan Dentzer, *Three Key Lessons from the Health Care Transparency Summit*, Robert Wood Foundation, (April 16, 2015) http://www.rwjf.org/en/culture-of-health/2015/04/3_key_lessons_fromt.html?cid=xrs_rss-pr (last visited on Jan. 14, 2016).
[5] Many hospital bills, and bills issued by other health care facilities, consist of billing codes and names of procedures or medications which may not be easily understood by a layperson. Additionally, it may be difficult to determine whether charges on the bill have been paid, need to be paid, or will be paid by a third party such as a health insurer.
[6] For example, an older patient may be more fragile and require more recovery time and caution when administering a procedure and, therefore, may be charged more than a younger patient for the same procedure. Additionally, actual payment amounts to the health care provider may differ from patient to patient depending on whether that patient has insurance and the magnitude of any discounts that the insurer has negotiated with that health care provider.
[7] Health care Financial Management Association Price Transparency Taskforce, *Price Transparency in Health Care*, p.2 (2014) (on file with the Senate Committee on Health Policy).

Current Florida Requirements for Health Care Price and Quality Transparency

Current Florida law establishes multiple requirements regarding health care cost and quality transparency. Examples of such requirements include:

- Florida's Patient's Bill of Rights and Responsibilities,[8] which establishes the right of patients to, among other rights, be given information of known financial resources for the patient's health care, a reasonable estimate of charges before a procedure, and an itemized bill;
- The requirement for hospitals and ambulatory surgery centers (ASCs) to provide patients and their physicians with itemized bills upon request;[9]
- The requirement for pharmacies, health insurers, and health maintenance organizations (HMOs) to inform customers of the availability of the Agency for Health Care Administration's (AHCA's) quality and cost information;[10] and
- The requirement for HMOs to disclose financial data to customers and provide customers with estimated costs for services.[11]

The Florida Center for Health Information and Policy Analysis

Section 408.05, F.S., establishes the Florida Center for Health Information and Policy Analysis (Florida Center). The Florida Center is required to establish a comprehensive health information system to provide for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of collected and extant health-related data. The Florida Center is responsible for:

- Collecting adverse incident reports from hospitals, ASCs, HMOs, nursing homes, and assisted living facilities (ALFs);
- Collecting discharge data from licensed hospitals, ASCs, emergency departments, cardiac catheterization laboratories, and lithotripsy;
- Administering patient injury reporting, tracking, trending, and problem resolution programs for hospitals, ASCs, nursing homes, ALFs, and some HMOs
- Processing patient data requests and providing technical assistance; and
- Administering www.FloridaHealthFinder.gov, Florida's state-run website which provides easy access to health care information through health care quality comparison tools, a health encyclopedia, and other resources. The public may access the website to learn about medical conditions, compare health care facilities and providers, and find health care resources. The website also allows users to compare price ranges for some commonly offered health care services between health care providers.[12, 13]

[8] Section 381.026, F.S.
[9] Section 395.301, F.S.
[10] Sections 465.0244, 627.54, and 641.54, F.S
[11] Section 641.54, F.S.
[12] See *Florida Center for Health Information and Policy Analysis*, http://www.ahca.myflorida.com/schs/index.shtml (last visited on Jan. 14, 2016) and the Florida Health Finder FAQ, http://www.floridahealthfinder.gov/media/training-video.aspx (last visited on Jan. 14, 2016)
[13] Quality and price data is available on the website and searchable for approximately 150 conditions. Email from Orlando Pryor, AHCA Legislative Affairs Office (Jan. 15, 2016) (on file with the Senate Committee on Health Policy).

The Florida Commission on Health care and Hospital Funding

On May 5, 2015, Governor Rick Scott signed Executive Order 15-99 that established the Commission on Health care and Hospital Funding (commission).[14] The commission was created to investigate and advise on the role of taxpayer funding for hospitals, insurers, and health care providers, and the affordability, access, and quality of health care services they provide. The commission has met 15 times between May 20, 2015 and January 19, 2016, and will continue meeting. The commission has heard testimony and collected data from numerous sources, including physicians, hospitals, state agencies, health maintenance organizations, and the public, but it has not yet published conclusions or final recommendations. On November 19, 2015, the commission endorsed proposed bill language from Governor Scott to address the issue of health care price and quality transparency.[15, 16] Many of the concepts inherent to the Governor's proposal are addressed in SB 1496.

III. Effect of Proposed Changes:

Section 1 amends the licensure requirements for hospitals and ambulatory surgical centers (ASCs) in s. 395.301, F.S., to require that such facilities meet new standards for providing financial information and quality of service measures to patients and the public.[17]

General Requirements for the Provision of Information to the Public

The bill requires each hospital and ASC to:

- Provide timely and accurate financial information and quality of service measures to prospective patients, actual patients, and patient's legal guardians or survivors;
- Provide information on payments made to that facility via the facility's website, under the following parameters:
  - The posted information must be presented and searchable in accordance with the system and service bundles established by the Agency for Health Care Administration (AHCA).
  - The minimum information that must be provided by the facility for each service bundle includes:
    - The estimated average payment received from all payers except Medicaid and Medicare; and
    - The estimated payment range.
  - The facility must state in plain language that the information provided is an estimate of costs and that actual costs will be based on services actually provided.
  - The facility must assist the consumer in accessing his or her health insurer's or HMO's website for information on estimated copayments, deductibles, and other cost-sharing responsibilities;

[14] Executive order 15-99, *available at* http://www.flgov.com/wp-content/uploads/orders/2015/EO_15-99.pdf, (last visited on Jan. 15, 2016).
[15] Letter from the Commission on Health care and Hospital Funding to Senate President Andy Gardiner and Speaker of the House of Representatives Steve Crisafulli (November 19, 2015) (on file with the Senate Committee on Health Policy).
[16] Governor's Recommended Bill, *Health Care Transparency*, available at http://www.healthandhospitalcommission.com/docs/Health careTransparencyProposal.pdf (last visited on Jan. 15, 2016).
[17] Note: Some of the effects detailed in the analysis of section 1 of the bill are requirements that are in current law and which are either kept intact or revised and restated. Due to the significant reorganization of s. 395.301, F.S., the total effects of all new, current law, and revised requirements are included in this analysis as effects of the bill.

- Post information on its website, including:
  - The names of all health insurers and HMOs for which the facility is a network provider or a preferred provider, along with links to the respective websites;
  - Information for uninsured or out-of-network patients on:
    - The facility's financial assistance policy including the application process, payment plans, and discounts; and
    - The facility's collection procedures and charity care policies;
  - A notification to patients and prospective patients that services may be provided in the facility by the facility and by other health care providers who may bill separately;
  - Notification that patients and prospective patients may request a personalized estimate of charges from the facility; and
  - A link to health-related data, including quality measures and statistics that are disseminated by the AHCA; and
- Take action to notify the public that health-related data is electronically available to the public and provide a link to the AHCA's website.

Requirements to Respond to Specific Requests for Information

Upon specific request, the bill requires each facility to provide:

- A written, good-faith estimate of reasonably anticipated facility charges for the non-emergency treatment of the requestor's specific condition, under the following parameters:
  - The estimate must be provided within seven business days after the receipt of the request;
  - The facility is not required to adjust the estimate to account for any insurance coverage;
  - The estimate may be based on the service bundles created by the AHCA unless the patient requests a more specific estimate;
  - The facility must inform the patient that he or she may contact his or her health insurer or HMO for additional information on cost-sharing responsibilities;
  - The estimate must provide information on the facility's financial assistance policy, including the application process, payment plans, and discounts;
  - The estimate must provide information on the facility's charity care policy and collection procedures;
  - Upon request, the facility must notify the requestor of any revision to the estimate;
  - The estimate must contain a notice that services may be provided by other health care providers who may bill separately;
  - The facility must take action to notify the public that such estimates are available;
  - The facility will be fined $500 for each instance of failing to timely provide a requested estimate; and
  - The provision of the estimate does not preclude the charges from exceeding the estimate;
- An itemized bill or statement to the patient, or the patient's survivor or legal guardian, under the following parameters:
  - The initial itemized statement or bill:
    - Must be provided within seven days of the patient's discharge or the patient's request;
    - Must detail the specific nature of charges or expenses in plain language, comprehensible to an ordinary layperson;
    - Must contain a statement of specific services received and expenses incurred by date;
    - Must enumerate in detail, as prescribed by the AHCA, the constituent components of the services received within each department of the facility;

        - Must include unit price data on rates charged by the facility;
        - Must identify each item as paid, pending payment by a third party, or pending payment by the patient;
        - Must include the amount due, if applicable;
        - Must advise the patient or the patient's legal survivor or guardian to contact the patient's health insurer or HMO regarding the patient's cost-sharing responsibilities;
        - Must include a notice of hospital-based physicians and other health care providers who bill separately;
        - May not include any generalized category of expenses;
        - Must list drugs by brand or generic name;
        - Must identify the date, type, and length of treatment for any physical, occupational, or speech therapy provided; and
        - Must prominently display the telephone number of the medical facility's patient liaison;
    - Any subsequent bill must contain all of the information required in the initial bill with any revisions clearly delineated;
    - A facility must make available at no charge, except copying fees, both in the facility's office and electronically, all records necessary for the verification of the accuracy of the invoice or bill within 10 business days after a request for such records and before payment of the statement or bill; and
    - Each facility must establish a method of responding to a patient's question about his or her itemized bill within seven business days after the question is received.

If the patient is not satisfied with the facility's response to a question, the facility must provide the patient with the address and contract information for the consumer advocate as provided in s. 627.0613, F.S.

Miscellaneous Provisions

The bill deletes statutory language:

- Stating that any person who receives an itemized statement is fully and accurately informed as to each charge and service provided by the institution preparing the statement;
- Requiring an itemized statement to contain a disclosure identifying the ownership status, either for-profit or not-for-profit, of the facility preparing the statement;
- Requiring an itemized bill to be provided to the patient's physician at no charge;
- Restricting physicians, dentists, podiatrists, and other licensed facilities from adding to the price charged by a third party except for a service or handling charge which represents a cost actually incurred.

The bill also makes other technical and conforming changes.

Section 2 creates s. 395.3012, F.S., to allow the AHCA to impose fines based on the findings of the consumer advocate's investigation of billing complaints pursuant to s. 627.0613(6), F.S. The

bill sets the fines for noncompliance at the greater of $2,500 per violation or double the amount that the charges exceeded fair charges.[18]

Sections 3, 4, and 5 amend ss. 400.165, 400.487, and 400.934, F.S., respectively, to require nursing homes, home health agencies, and home medical equipment providers to, upon request, provide a written, good-faith estimate of reasonably anticipated charges for services provided by that health care provider within seven business days after receiving a request and to provide information disclosing payment plans, discounts, other available assistance, and collection procedures. Additionally, home health agencies and home medical equipment providers must inform the requestor that he or she may contact his or her health insurer or HMO for additional information concerning cost sharing responsibilities.

Section 6 amends s. 408.05, F.S., to replace the Florida Center for Health Information and Policy Analysis with the Florida Center for Health Information and Transparency (center), to be housed within the AHCA. The center's responsibilities are streamlined and updated to reflect current data needs. The center is tasked with collecting, compiling, coordinating, analyzing, indexing, and disseminating health-related data and statistics. The center and the AHCA must meet numerous requirements, as described below.[19]

Health Related Data

The bill:

- Requires that the center be staffed as necessary to carry out its functions;
- Requires that the center maintain data sets in existence before July 1, 2016, unless such data are duplicated and readily available from other credible sources;
- Requires that the center collect data on:
  - Health resources, including licensed health care practitioners by specialty and type of practice and including data collected by the Department of Health (DOH) pursuant to ss. 458.3191 and 456.0081, F.S.;
  - Health service inventories, including acute care, long-term care, and other institutional care facilities and specific services provided by hospitals, nursing homes, home health agencies, and other licensed health care facilities;
  - Service utilization for licensed health care facilities;
  - Health care costs and financing;
  - The extent of public and private health insurance coverage in Florida; and
  - Specific quality-of-care initiatives involving various health care providers when extant data is not adequate to achieve the objectives of the initiatives;
- Eliminates the requirement that the center collect data on:
  - The extent and nature of illness and disability of the state population;
  - The impact of illness and disability of the state population on the state economy;
  - Environmental, social, and other health hazards;
  - Health knowledge and practices of the people in Florida; and

[18] The term "fair charges" is defined under Section 10 of the bill to mean the common and frequent range of charges for patients who are similarly situated requiring the same or similar medical services.

[19] As similarly noted in Section 1, due to significant revision and organizational changes in this section, the total effects of all new, revised, and current law requirements are included in this analysis as effects of the bill.

- Family formation, growth, and dissolution.

Health Information Transparency

The bill:

- Requires the AHCA to:
  - Contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures and allows for price comparison, and the platform must allow a consumer to search by condition or service bundle that is comprehensible to an ordinary layperson and may not require registration, password, or user identification;
  - Collect and compile information on and coordinate the activities of state agencies involved in providing health information to consumers;
  - Promote data sharing by making state-collected data available, transferable, and readily usable;
  - Develop written agreements with local, state, and federal agencies to facilitate the sharing of data related to health care;
  - Establish by rule the types of data collected, complied, processed, used, or shared;
  - Consult with contracted vendors, the State Consumer Health Information and Policy Advisory Council, and other public and private users regarding the types of data that should be collected and the use of such data;
  - Monitor data collection procedures and test data quality to facilitate the dissemination of data that are accurate, valid, reliable, and complete;
  - Develop methods for archiving data, retrieving archived data, and editing data, and verifying data;
  - Make available health care quality measures that will allow consumers to compare outcomes and other performance measures for health care services; and
  - Make available the results of special health surveys, health care research, and health care evaluations conducted or supported by under s. 408.05, F.S.;
- Restricts the AHCA from establishing an all-payer claims database without express legislative authority;
- Eliminates requirements, except as detailed above, for the AHCA and the center to:
  - Review the statistical activities of state agencies to ensure they are consistent with the comprehensive health information system;
  - Establish minimum health-care-related data sets;
  - Establish advisory standards for the quality of health statistical and epidemiological data collection;
  - Prescribe standards for the publication of health-care-related data;
  - Establish a long-range plan for making health care quality measures and financial data available;
  - Provide technical assistance to persons or organizations engaged in health planning activities;
  - Administer, manage, and monitor grants related to health information services; and
  - Aid in the dissemination of data through the publication of reports, including an annual report, and conducting special studies and surveys.

The vendor must:

- Be a non-profit research institute that is qualified under s. 1874 of the federal Social Security Act to receive Medicare claims data and which receives claims data from multiple private insurers nationwide;
- Have a national database consisting of at least 15 billion claim lines of administrative claims data from multiple payers capable of being expanded by adding third-party payers, including employers with Employee Retirement Income Security Act of 1974 (ERISA) plans;
- Have a well-developed methodology for analyzing claims data within defined service bundles; and
- Have a bundling methodology that is available in the public domain to allow for consistency and comparison of state and national benchmarks with local regions and specific providers.

Section 7 amends s. 408.061, F.S., to:
- Require that the AHCA mandate the submission of data from health care facilities, health care providers, and health insurers in order to facilitate transparency in health care pricing and quality measures;
- Provide that data submitted by health care providers may include actual charges to patients as specified by rule; and
- Provide that data submitted by health insurers may include payments to health care facilities and health care providers as specified by rule.

Section 8 amends s. 456.0575, F.S., to require that every licensed health care practitioner must provide, upon request by a patient, a good-faith estimate of reasonably anticipated charges for any non-emergency services to treat the patient's condition at a hospital or ASC. This estimate must be provided within seven business days after receiving the request and before providing the service for which the request for an estimate was made. The practitioner must inform the patient that he or she may contact his or her health insurer or HMO for additional information concerning cost-sharing responsibilities. The practitioner must also provide information to uninsured or out of network patients on the practitioner's financial assistance policy, including the application process, payment plans, discounts, and other available assistance, the practitioner's charity care policy, and the practitioner's collection procedures.

The bill provides that such an estimate does not preclude the actual charges from exceeding the estimate and that failure to provide a requested estimate in accordance with the provisions stated and without good cause will result in disciplinary action and a fine of $500 for each instance of failure to provide the requested estimate.

Section 9 amends s. 456.072, F.S., to include the failure to comply with fair billing practices pursuant to s. 627.0613, F.S., in the list of grounds for which disciplinary actions may be taken against a health care practitioner.

Section 10 amends s. 627.0613, F.S., to expand the duties of the consumer advocate.[20] The bill requires that:

[20] The consumer advocate is appointed by, and reports to, the Chief Financial Officer and is tasked with representing the general public before various state agencies.

- The consumer advocate must report to the AHCA and the DOH the findings resulting from investigation of unresolved complaints concerning the billing practices of any hospital, ASC, or health care practitioner licensed under ch. 456, F.S.;
- The AHCA and the DOH must grant the consumer advocate access to any files, records, and data which are necessary for such investigations;
- The consumer advocate must provide mediation between providers and patients to resolve billing complaints and negotiate arrangements for extended payment schedules; and
- The consumer advocate must maintain a process for receiving and investigating complaints concerning billing practices by hospitals, ASCs, and health care practitioners licensed under ch. 456, F.S.

Under the bill, such investigations by the consumer advocate are limited to determining compliance with the following:

- The patient was informed before a non-emergency procedure of the expected payments related to the procedure, the contact information for health insurers or HMOs, and the expected involvement of other providers who may bill separately;
- The patient was informed of policies and procedures to qualify for discounts;
- The patient was informed of collection procedures and given the opportunity to participate in an extended payment schedule;
- The patient was given a written, personal, and itemized estimate as required in s. 395.301, F.S., for facilities and s. 456.0575, F.S., for health care practitioners for services in a facility;
- The statement or bill delivered to the patient was accurate and included all required information; and
- The billed amounts were fair charges, defined as "the common and frequent range of charges for patients who are similarly situated requiring the same or similar medical services."

Section 11 creates s. 627.6385, F.S., to require each health insurer to:

- Make available on its website a method for policyholders to estimate their cost-sharing responsibilities for health care services and procedures based on the service bundles established in s. 408.05(3)(c), F.S., or based on a personalized estimate, and a link to the health and quality information disseminated by the AHCA;
- Include in every policy delivered or issued to a person in Florida a notice that the information required by this section is available electronically and the address of the website where the information can be accessed; and
- If the health insurer participates in the state group health insurance plan or Medicaid managed care, provide all claims data to the fullest extent possible to the contracted vendor selected by the AHCA under s. 408.05(3)(c), F.S.

Under the bill, a health insurer that provides data to the vendor as described above is eligible for a 0.05 percent credit against the premium tax established pursuant to s. 624.509, F.S. This credit may exceed the limitation on such tax credits that is imposed by that section of law.

Section 12 amends s. 641.54, F.S., to require each HMO to:

- Make available electronically or by request the estimated amount of any cost-sharing responsibilities for any covered services described by the service bundles established

pursuant to s. 408.05(3)(c), F.S., or as described in a personalized estimate received from a health care facility or health care practitioner;
- If the HMO participates in the state group health insurance plan or Medicaid managed care, provide all claims data to the fullest extent possible to the contracted vendor selected by the AHCA under s. 408.05(3)(c), F.S.; and
- Create a link on its website to the health information disseminated by the AHCA.

Under the bill, an HMO that provides data to the vendor as described above is eligible for a 0.05 percent credit against the premium tax established pursuant to s. 624.509, F.S. This credit may exceed the limitation on such tax credits that is imposed by that section of law.

Section 13 amends s. 409.967, F.S., to require that Medicaid managed care plans provide all claims data to the fullest extent possible to the contracted vendor selected by the AHCA under s. 408.05(3)(c), F.S.

Section 14 amends s. 110.123, F.S., to require that the Department of Management Services make arrangements to provide claims data of the state group health insurance plan to the contracted vendor selected by the AHCA pursuant to s. 408.05(3)(c), F.S. The bill also requires that each health plan awarded a contract in state group health insurance must provide claims data to the selected vendor.

Sections 15 and 16 create ss. 212.099 and 220.197, F.S., to establish tax credits against sales and use tax and corporate income tax, respectively, to encourage the submission of health care claims data for employees receiving health coverage under ERISA. These provisions take effect on January 1, 2017. The bill:
- Defines "eligible employer" as an employer that provides a health plan covered by the ERISA to eligible employees and provides qualifying health care claims information submissions on a quarterly basis;
- Defines "eligible employee" as an employee who is employed by an eligible employer and is covered under the eligible employer's ERISA plan;
- Defines "qualifying health care claims information submission" as the submission of health care claims information on eligible employees to the contract vendor selected by the AHCA pursuant to s. 408.05(3)(c), F.S.;
- Establishes each tax credit as an amount equal to the number of eligible employees included on each qualifying health care claims information submission multiplied by $50, up to a maximum of $500,000;
- Allows any excess credit amounts to be taken within 12 months after such submission for sales tax and within five years for corporate income tax;
- States that corporations may use only one of the tax credits established in ss. 212.099 and 220.197, F.S.; and
- Provides that any person who fraudulently claims such a tax credit commits a misdemeanor of the second degree and must repay 100 percent of the credit.

Sections 17 through 23 amend various sections of law to make technical and conforming changes.

Section 24 provides that, except as otherwise expressly provided, the bill takes effect on July 1, 2016.

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:

SB 1496 establishes two new tax credits:

- A 0.05 percent tax credit against a health insurer or health maintenance organization's (HMO's) premium tax available to health insurers and HMOs that provide claims data to the vendor selected by the AHCA, and this credit may exceed the statutory limitation on such tax credits established in s. 624.509, F.S.; and
- A tax credit of up to $500,000 against either state sales and use tax or state corporate income tax available to employers with Employee Retirement Income Security Act of 1974 (ERISA) plans who submit qualifying health care claims information to the vendor selected by the Agency for Health Care Administration (AHCA).

B. Private Sector Impact:

The bill may have a positive fiscal impact on consumers of health care services to the extent the transparency measures allow consumers to make better informed choices on where to obtain their health care services based on price and quality, take advantage of discounts or other financial assistance, or negotiate with health care service providers on the specific costs of services.

The bill may have a negative fiscal impact on providers of health care services, health insurers, and HMOs related to posting health care information on their webpages or providing patient-specific estimates.

The bill may have a positive fiscal impact on health insurers, HMOs, and employers with ERISA plans that are able to take advantage of the tax credits established in the bill.

C. Government Sector Impact:

The AHCA estimates that the bill will have recurring costs to the agency of approximately $2.7 million per year, all of which is general revenue. Contracted services account for approximately $2.5 to $2.6 million of the annual costs. Approximately $133,000 of the annual costs are for two full-time-equivalent positions. Additional recurring costs include approximately $12,000 per year for expenses and less than $1,000 per year for human resource services. The AHCA also estimates non-recurring costs for Fiscal Year 2016-2017 of $9,054.[21]

Estimates of the aggregate amounts of tax credits that will be applied under sections 11, 12, 15, and 16 of the bill are not yet known. An estimate of the fiscal impact of the new duties of the office of the consumer advocate within the Department of Financial Services (DFS) is not yet available, but an estimate has been requested of the DFS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.301, 400.165, 400.487, 400.934, 408.05, 408.061, 456.0575, 456.072, 627.0613, 641.54, 409.967, 110.123, 20.42, 381.026, 395.602, 395.6025, 408.07, 408.18, and 465.0244.

This bill creates the following sections of the Florida Statutes: 212.099, 220.197, 395.3012, and 627.6385.

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.

[21] Fiscal analysis provided by the AHCA on January 19, 2016. On file with Senate Health Policy staff.

By Senator Bradley

7-01281C-16 20161496__

A bill to be entitled

An act relating to transparency in health care; amending s. 395.301, F.S.; requiring a facility licensed under ch. 395, F.S., to provide timely and accurate financial information and quality of service measures to certain individuals; providing an exemption; requiring a licensed facility to make available on its website certain information on payments made to that facility for defined bundles of services and procedures and other information for consumers and patients; requiring that facility websites provide specified information and notify and inform patients or prospective patients of certain information; requiring a facility to provide a written, good faith estimate of charges to a patient or prospective patient within a certain timeframe; requiring a facility to provide information regarding financial assistance from the facility which may be available to a patient or a prospective patient; providing a penalty for failing to provide an estimate of charges to a patient; deleting a requirement that a licensed facility not operated by the state provide notice to a patient of his or her right to an itemized statement or bill within a certain timeframe; revising the information that must be included on a patient's statement or bill; requiring that certain records be made available through electronic means that comply with a specified law; reducing the response time for certain patient requests for information; creating s. 395.3012, F.S.; authorizing the Agency for Health Care Administration to impose penalties based on certain findings of an investigation as determined by the

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consumer advocate; amending ss. 400.165, 400.487, and 400.934, F.S.; requiring nursing homes, home health agencies, and home medical equipment providers to provide upon request certain written estimates of charges within a certain timeframe; amending s. 408.05, F.S.; revising requirements for the collection and use of health-related data by the agency; requiring the agency to contract with a vendor to provide an Internet-based platform with certain attributes; requiring potential vendors to have certain qualifications; prohibiting the agency from establishing a certain database under certain circumstances; amending s. 408.061, F.S.; revising requirements for the submission of health care data to the agency; amending s. 456.0575, F.S.; requiring a health care practitioner to provide a patient upon his or her request a written, good faith estimate of anticipated charges within a certain timeframe; amending s. 456.072, F.S.; providing that the failure to comply with fair billing practices by a health care practitioner is grounds for disciplinary action; amending s. 627.0613, F.S.; providing that the consumer advocate must represent the general public before other state agencies; authorizing the consumer advocate to report findings relating to certain investigations to the agency and the Department of Health; authorizing the consumer advocate to have access to files, records, and data of the agency and the department necessary for certain investigations;

authorizing the consumer advocate to maintain a process to receive and investigate complaints from patients relating to compliance with certain billing and notice requirements by licensed health care facilities and practitioners; defining a term; authorizing the consumer advocate to provide mediation between providers and consumers relating to certain matters; creating s. 627.6385, F.S.; requiring a health insurer to make available on its website certain methods that a policyholder can use to make estimates of certain costs and charges; providing that an estimate does not preclude an actual cost from exceeding the estimate; requiring a health insurer to make available on its website a hyperlink to certain health information; requiring a health insurer to include certain notice; requiring a health insurer that participates in the state group health insurance plan or Medicaid managed care to provide all claims data to a contracted vendor selected by the agency; providing a credit against the premium tax to certain health insurers; amending s. 641.54, F.S.; revising the provision requiring a health maintenance organization to make certain information available to its subscribers; requiring a health maintenance organization that participates in the state group health insurance plan or Medicaid managed care to provide all claims data to a contracted vendor selected by the agency; providing a credit against certain premium taxes to specified health maintenance

organizations; amending s. 409.967, F.S.; requiring managed care plans to provide all claims data to a contracted vendor selected by the agency; amending s. 110.123, F.S.; requiring the Department of Management Services to provide certain data to the contracted vendor for the price transparency database established by the agency; requiring a contracted vendor for the state group health insurance plan to provide claims data to the vendor selected by the agency; creating s. 212.099, F.S.; defining terms; authorizing a credit against sales and use tax for taxpayers that provide health care claims information; providing a limitation on credit amounts; providing penalties for fraudulently claiming the credit; creating s. 220.197, F.S.; defining terms; authorizing a credit against corporate income tax for corporations that provide health care claims information; providing a limitation on credit amounts; providing penalties for fraudulently claiming the credit; amending ss. 20.42, 381.026, 395.602, 395.6025, 408.07, 408.18, and 465.0244, F.S.; conforming provisions to changes made by the act; providing effective dates.

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

Section 1. Section 395.301, Florida Statutes, is amended to read:

395.301 Price transparency; itemized patient statement or bill; ~~form and content prescribed by the agency;~~ patient

admission status notification.—

(1) A facility licensed under this chapter shall provide timely and accurate financial information and quality of service measures to prospective and actual patients of the facility, or to patients' survivors or legal guardians, as appropriate. Such information shall be provided in accordance with this section and rules adopted by the agency pursuant to this chapter and s. 408.05. Licensed facilities operating exclusively as state mental health treatment facilities or as mobile surgical facilities are exempt from the requirements of this subsection.

(a) Each licensed facility shall make available to the public on its website information on payments made to that facility for defined bundles of services and procedures. The payment data must be presented and searchable in accordance with the system established by the agency and its vendor using the descriptive service bundles developed under s. 408.05(3)(c). At a minimum, the facility shall provide the estimated average payment received from all payors, excluding Medicaid and Medicare, for the descriptive service bundles available at that facility and the estimated payment range for such bundles. Using plain language, comprehensible to an ordinary layperson, the facility must disclose that the information on average payments and the payment ranges is an estimate of costs that may be incurred by the patient or prospective patient and that actual costs will be based on the services actually provided to the patient. The facility shall also assist the consumer in accessing his or her health insurer's or health maintenance organization's website for information on estimated copayments, deductibles, and other cost-sharing responsibilities. The

facility's website must:

1. Identify and post the names of all health insurers and health maintenance organizations for which the facility is a network provider or preferred provider and include a hyperlink to the website of each.

2. Provide information to uninsured patients and insured patients whose health insurer or health maintenance organization does not include the facility as a network provider or preferred provider on the facility's financial assistance policy, including the application process, payment plans, and discounts, and the facility's charity care policy and collection procedures.

3. Notify patients or prospective patients that services may be provided in the health care facility by the facility as well as by other health care providers who may separately bill the patient.

4. Inform patients or prospective patients that they may request from the facility and other health care providers a more personalized estimate of charges and other information.

(b)1. Upon request, and before providing any nonemergency medical services, each licensed facility shall provide a written, good faith estimate of reasonably anticipated charges by the facility for the treatment of the patient's or prospective patient's specific condition. The facility must provide the estimate in writing to the patient or prospective patient within 7 business days after the receipt of the request and is not required to adjust the estimate for any potential insurance coverage. The estimate may be based on the descriptive service bundles developed by the agency under s. 408.05(3)(c)

unless the patient or prospective patient requests a more personalized and specific estimate that accounts for the specific condition and characteristics of the patient or prospective patient. The facility shall inform the patient or prospective patient that he or she may contact his or her health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities.

2. In the estimate, the facility shall provide to the patient or prospective patient information on the facility's financial assistance policy, including the application process, payment plans, and discounts and the facility's charity care policy and collection procedures.

3. Upon request, the facility shall notify the patient or prospective patient of any revision to the estimate.

4. In the estimate, the facility must notify the patient or prospective patient that services may be provided in the health care facility by the facility as well as by other health care providers that may separately bill the patient.

5. The facility shall take action to educate the public that such estimates are available upon request.

6. Failure to timely provide the estimate pursuant to this paragraph shall result in a fine of $500 for each instance of the facility's failure to provide the requested information.

The provision of an estimate does not preclude the actual charges from exceeding the estimate.

(c) Each facility shall make available on its website a hyperlink to the health-related data, including quality measures and statistics that are disseminated by the agency pursuant to

s. 408.05. The facility shall also take action to notify the public that such information is electronically available and provide a hyperlink to the agency's website.

(d)1. Upon request, and after the patient's discharge or release from the facility, the facility must provide ~~A licensed facility not operated by the state shall notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. Within 7 days following the patient's discharge or release from a licensed facility not operated by the state, the licensed facility providing the service shall, upon request, submit~~ to the patient~~,~~ or to the patient's survivor or legal guardian, as ~~may be~~ appropriate, an itemized statement or bill detailing in plain language, comprehensible to an ordinary layperson, the specific nature of charges or expenses incurred by the patient.~~, which in~~ The initial statement or bill ~~billing~~ shall be provided within 7 days after the patient's discharge or release from the facility or after a request for such statement or bill, whichever is later. The initial statement or bill must contain a statement of specific services received and expenses incurred by date for such items of service, enumerating in detail as prescribed by the agency the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility~~, as prescribed by the agency~~. The statement or bill must identify each item as paid, pending payment by a third party, or pending payment by the patient and must include the amount due, if applicable. If an amount is due from the patient, a due date must be included. The initial statement or bill must inform the

patient or the patient's survivor or legal guardian, as appropriate, to contact the patient's insurer or health maintenance organization regarding the patient's cost-sharing responsibilities.

2. Any subsequent statement or bill provided to a patient or to the patient's survivor or legal guardian, as appropriate, relating to the episode of care must include all of the information required by subparagraph 1., with any revisions clearly delineated.

3.~~(2)(a)~~ Each ~~such~~ statement or bill provided ~~submitted~~ pursuant to this subsection ~~section~~:

a.~~1.~~ Must ~~May not~~ include notice ~~charges~~ of hospital-based physicians and other health care providers who bill ~~if billed~~ separately.

b.~~2.~~ May not include any generalized category of expenses such as "other" or "miscellaneous" or similar categories.

c.~~3.~~ Must ~~Shall~~ list drugs by brand or generic name and not refer to drug code numbers when referring to drugs of any sort.

d.~~4.~~ Must ~~Shall~~ specifically identify physical, occupational, or speech therapy treatment as to the date, type, and length of treatment when such ~~therapy~~ treatment is a part of the statement or bill.

~~(b) Any person receiving a statement pursuant to this section shall be fully and accurately informed as to each charge and service provided by the institution preparing the statement.~~

~~(2)(3) On each itemized statement submitted pursuant to subsection (1) there shall appear the words "A FOR PROFIT (or NOT FOR PROFIT or PUBLIC) HOSPITAL (or AMBULATORY SURGICAL CENTER) LICENSED BY THE STATE OF FLORIDA" or substantially~~

~~similar words sufficient to identify clearly and plainly the ownership status of the licensed facility.~~ Each itemized statement or bill must prominently display the telephone ~~phone~~ number of the medical facility's patient liaison who is responsible for expediting the resolution of any billing dispute between the patient, or the patient's survivor or legal guardian ~~his or her representative~~, and the billing department.

~~(4) An itemized bill shall be provided once to the patient's physician at the physician's request, at no charge.~~

~~(5) In any billing for services subsequent to the initial billing for such services, the patient, or the patient's survivor or legal guardian, may elect, at his or her option, to receive a copy of the detailed statement of specific services received and expenses incurred for each such item of service as provided in subsection (1).~~

~~(6) No physician, dentist, podiatric physician, or licensed facility may add to the price charged by any third party except for a service or handling charge representing a cost actually incurred as an item of expense; however, the physician, dentist, podiatric physician, or licensed facility is entitled to fair compensation for all professional services rendered. The amount of the service or handling charge, if any, shall be set forth clearly in the bill to the patient.~~

~~(7) Each licensed facility not operated by the state shall provide, prior to provision of any nonemergency medical services, a written good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition upon written request of a prospective patient. The estimate shall be provided to the prospective patient within 7~~

~~business days after the receipt of the request. The estimate may be the average charges for that diagnosis related group or the average charges for that procedure. Upon request, the facility shall notify the patient of any revision to the good faith estimate. Such estimate shall not preclude the actual charges from exceeding the estimate. The facility shall place a notice in the reception area that such information is available. Failure to provide the estimate within the provisions established pursuant to this section shall result in a fine of $500 for each instance of the facility's failure to provide the requested information.~~

~~(8) Each licensed facility that is not operated by the state shall provide any uninsured person seeking planned nonemergency elective admission a written good faith estimate of reasonably anticipated charges for the facility to treat such person. The estimate must be provided to the uninsured person within 7 business days after the person notifies the facility and the facility confirms that the person is uninsured. The estimate may be the average charges for that diagnosis-related group or the average charges for that procedure. Upon request, the facility shall notify the person of any revision to the good faith estimate. Such estimate does not preclude the actual charges from exceeding the estimate. The facility shall also provide to the uninsured person a copy of any facility discount and charity care discount policies for which the uninsured person may be eligible. The facility shall place a notice in the reception area where such information is available. Failure to provide the estimate as required by this subsection shall result in a fine of $500 for each instance of the facility's failure to~~

~~provide the requested information.~~

(3)~~(9)~~ If a licensed facility places a patient on observation status rather than inpatient status, observation services shall be documented in the patient's discharge papers. The patient or the patient's survivor or legal guardian ~~proxy~~ shall be notified of observation services through discharge papers, which may also include brochures, signage, or other forms of communication for this purpose.

(4)~~(10)~~ A licensed facility shall make available to a patient all records necessary for verification of the accuracy of the patient's statement or bill within 10 ~~30~~ business days after the request for such records. The records ~~verification information~~ must be made available in the facility's offices and through electronic means that comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Such records must ~~shall~~ be available to the patient before ~~prior to~~ and after payment of the statement or bill ~~or claim~~. The facility may not charge the patient for making such verification records available; however, the facility may charge its usual fee for providing copies of records as specified in s. 395.3025.

(5)~~(11)~~ Each facility shall establish a method for reviewing and responding to questions from patients concerning the patient's itemized statement or bill. Such response shall be provided within 7 business ~~30~~ days after the date a question is received. If the patient is not satisfied with the response, the facility must provide the patient with the address and contact information of the consumer advocate as provided in s. 627.0613 ~~agency~~ to which the issue may be sent for review.

~~(12) Each licensed facility shall make available on its~~

~~Internet website a link to the performance outcome and financial data that is published by the Agency for Health Care Administration pursuant to s. 408.05(3)(k). The facility shall place a notice in the reception area that the information is available electronically and the facility's Internet website address.~~

Section 2. Section 395.3012, Florida Statutes, is created to read:

395.3012 Penalties for unconscionable prices.—

(1) The agency may impose administrative fines based on the findings of the consumer advocate's investigation of billing complaints pursuant to s. 627.0613(6).

(2) The administrative fines for noncompliance with s. 395.301 are the greater of $2,500 per violation or double the amount of the charges that exceed fair charges.

Section 3. Present subsections (1) through (5) of section 400.165, Florida Statutes, are redesignated as subsections (2) through (6), respectively, a new subsection (1) is added to that section, and present subsection (4) of that section is amended, to read:

400.165 Itemized resident billing, form and content prescribed by the agency.—

(1) Every licensed nursing home shall provide upon the request of a resident or prospective resident or his or her legal guardian a written, good faith estimate of reasonably anticipated charges for the resident at the nursing home. The nursing home must provide the estimate to the requestor within 7 business days after receiving the request. The nursing home must also provide information disclosing the nursing home's payment

plans, discounts, and other available assistance and its collection procedures.

(5)~~(4)~~ In any billing for services subsequent to the initial billing for such services, the resident, or the resident's survivor or legal guardian, may elect, at his or her option, to receive a copy of the detailed statement of specific services received and expenses incurred for each such item of service as provided in subsection (2) ~~subsection (1)~~.

Section 4. Subsection (1) of 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.—

(1)(a) 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.

(b) Every licensed home health agency shall provide upon the request of a prospective patient or his or her legal guardian a written, good faith estimate of reasonably anticipated charges for the prospective patient for services provided by the home health agency. The home health agency must

provide the estimate to the requestor within 7 business days after receiving the request. The home health agency must inform the prospective patient, or his or her legal guardian, that he or she may contact the prospective patient's health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The home health agency must also provide information disclosing the home health agency's payment plans, discounts, and other available assistance and its collection procedures.

Section 5. Subsection (23) is added to section 400.934, Florida Statutes, to read:

400.934 Minimum standards.—As a requirement of licensure, home medical equipment providers shall:

(23) Provide upon the request of a prospective patient or his or her legal guardian a written, good faith estimate of reasonably anticipated charges for the prospective patient for services provided by the home medical equipment provider. The home medical equipment provider must provide the estimate to the requestor within 7 business days after receiving the request. The home medical equipment provider must inform the prospective patient, or his or her legal guardian, that he or she may contact the prospective patient's health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The home medical equipment provider must also provide information disclosing the home medical equipment provider's payment plans, discounts, and other available assistance and its collection procedures.

Section 6. Section 408.05, Florida Statutes, is amended to read:

408.05 Florida Center for Health Information and Transparency ~~Policy Analysis~~.—

(1) ESTABLISHMENT.—The agency shall establish and maintain a Florida Center for Health Information and Transparency to collect, compile, coordinate, analyze, index, and disseminate ~~Policy Analysis. The center shall establish a comprehensive health information system to provide for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant~~ health-related data and statistics. The center shall be staffed as necessary ~~with public health experts, biostatisticians, information system analysts, health policy experts, economists, and other staff necessary~~ to carry out its functions.

(2) HEALTH-RELATED DATA.—The ~~comprehensive health information system operated by the~~ Florida Center for Health Information and Transparency ~~Policy Analysis~~ shall identify ~~the best~~ available data sets, compile new data when specifically authorized, ~~data sources~~ and promote the use ~~coordinate the compilation~~ of extant health-related data and statistics. The center must maintain any data sets in existence before July 1, 2016, unless such data sets duplicate information that is readily available from other credible sources, and may ~~and purposefully~~ collect or compile data on the following:

~~(a) The extent and nature of illness and disability of the state population, including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality.~~

~~(b) The impact of illness and disability of the state population on the state economy and on other aspects of the~~

~~well-being of the people in this state.~~

~~(c) Environmental, social, and other health hazards.~~

~~(d) Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status.~~

(a) ~~(c)~~ Health resources, including licensed ~~physicians, dentists, nurses, and other~~ health care practitioners ~~professionals~~, by specialty and type of practice. Such data shall include information collected by the Department of Health pursuant to ss. 458.3191 and 459.0081.

(b) Health service inventories, including ~~and~~ acute care, long-term care, and other institutional care facilities ~~facility supplies~~ and specific services provided by hospitals, nursing homes, home health agencies, and other licensed health care facilities.

(c) ~~(f)~~ Service utilization for licensed health care facilities ~~of health care by type of provider~~.

(d) ~~(g)~~ Health care costs and financing, including trends in health care prices and costs, the sources of payment for health care services, and federal, state, and local expenditures for health care.

~~(h) Family formation, growth, and dissolution.~~

(e) ~~(i)~~ The extent of public and private health insurance coverage in this state.

(f) ~~(j)~~ Specific quality-of-care initiatives involving ~~The quality of care provided by~~ various health care providers when extant data is not adequate to achieve the objectives of the initiatives.

(3) ~~COMPREHENSIVE~~ HEALTH INFORMATION TRANSPARENCY ~~SYSTEM~~.—

In order to disseminate and facilitate the availability of ~~produce~~ comparable and uniform health information ~~and statistics for the development of policy recommendations~~, the agency shall perform the following functions:

(a) Collect and compile information on and coordinate the activities of state agencies involved in providing ~~the design and implementation of the comprehensive~~ health information to consumers ~~system~~.

(b) Promote data sharing through dissemination of state-collected health data by making such data available, transferable, and readily usable ~~Undertake research, development, and evaluation respecting the comprehensive health information system~~.

(c) Contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures and allows for price comparison. The Internet-based platform must allow a consumer to search by condition or service bundles that are comprehensible to an ordinary layperson and may not require registration, a security password, or user identification. The vendor must be a nonprofit research institute that is qualified under s. 1874 of the Social Security Act to receive Medicare claims data and that receives claims data from multiple private insurers nationwide. The vendor must have:

1. A national database consisting of at least 15 billion claim lines of administrative claims data from multiple payors capable of being expanded by adding third-party payors, including employers with health plans covered by the Employee Retirement Income Security Act of 1974 (ERISA).

2. A well-developed methodology for analyzing claims data within defined service bundles.

3. A bundling methodology that is available in the public domain to allow for consistency and comparison of state and national benchmarks with local regions and specific providers.

~~(c) Review the statistical activities of state agencies to ensure that they are consistent with the comprehensive health information system.~~

(d) Develop written agreements with local, state, and federal agencies to facilitate ~~for~~ the sharing of data related to health care ~~health-care-related data or using the facilities and services of such agencies. State agencies, local health councils, and other agencies under state contract shall assist the center in obtaining, compiling, and transferring health-care-related data maintained by state and local agencies. Written agreements must specify the types, methods, and periodicity of data exchanges and specify the types of data that will be transferred to the center~~.

(e) Establish by rule the types of data collected, compiled, processed, used, or shared. ~~Decisions regarding center data sets should be made based on consultation with the State Consumer Health Information and Policy Advisory Council and other public and private users regarding the types of data which should be collected and their uses. The center shall establish standardized means for collecting health information and statistics under laws and rules administered by the agency.~~

(f) Consult with contracted vendors, the State Consumer Health Information and Policy Advisory Council, and other public and private users regarding the types of data that should be

collected and the use of such data.

(g) Monitor data collection procedures and test data quality to facilitate the dissemination of data that is accurate, valid, reliable, and complete.

~~(f) Establish minimum health care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data. The agency shall periodically review ongoing health care data collections of the Department of Health and other state agencies to determine if the collections are being conducted in accordance with the established minimum sets of data.~~

~~(g) Establish advisory standards to ensure the quality of health statistical and epidemiological data collection, processing, and analysis by local, state, and private organizations.~~

~~(h) Prescribe standards for the publication of health-care-related data reported pursuant to this section which ensure the reporting of accurate, valid, reliable, complete, and comparable data. Such standards should include advisory warnings to users of the data regarding the status and quality of any data reported by or available from the center.~~

(h) ~~(i)~~ Develop ~~Prescribe standards for the maintenance and preservation of the center's data. This should include~~ methods for archiving data, retrieval of archived data, and data editing and verification.

~~(j) Ensure that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests.~~

(i) ~~(k)~~ Make ~~Develop, in conjunction with the State Consumer Health Information and Policy Advisory Council, and implement a long-range plan for making~~ available health care quality measures ~~and financial data~~ that will allow consumers to compare outcomes and other performance measures for health care services. ~~The health care quality measures and financial data the agency must make available include, but are not limited to, pharmaceuticals, physicians, health care facilities, and health plans and managed care entities. The agency shall update the plan and report on the status of its implementation annually. The agency shall also make the plan and status report available to the public on its Internet website. As part of the plan, the agency shall identify the process and timeframes for implementation, barriers to implementation, and recommendations of changes in the law that may be enacted by the Legislature to eliminate the barriers. As preliminary elements of the plan, the agency shall:~~

~~1. Make available patient-safety indicators, inpatient quality indicators, and performance outcome and patient charge data collected from health care facilities pursuant to s. 408.061(1)(a) and (2). The terms "patient-safety indicators" and "inpatient quality indicators" have the same meaning as that ascribed by the Centers for Medicare and Medicaid Services, an accrediting organization whose standards incorporate comparable regulations required by this state, or a national entity that establishes standards to measure the performance of health care providers, or by other states. The agency shall determine which conditions, procedures, health care quality measures, and patient charge data to disclose based upon input from the~~

~~council. When determining which conditions and procedures are to be disclosed, the council and the agency shall consider variation in costs, variation in outcomes, and magnitude of variations and other relevant information. When determining which health care quality measures to disclose, the agency:~~

~~a. Shall consider such factors as volume of cases; average patient charges; average length of stay; complication rates; mortality rates; and infection rates, among others, which shall be adjusted for case mix and severity, if applicable.~~

~~b. May consider such additional measures that are adopted by the Centers for Medicare and Medicaid Studies, an accrediting organization whose standards incorporate comparable regulations required by this state, the National Quality Forum, the Joint Commission on Accreditation of Healthcare Organizations, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, or a similar national entity that establishes standards to measure the performance of health care providers, or by other states.~~

~~When determining which patient charge data to disclose, the agency shall include such measures as the average of undiscounted charges on frequently performed procedures and preventive diagnostic procedures, the range of procedure charges from highest to lowest, average net revenue per adjusted patient day, average cost per adjusted patient day, and average cost per admission, among others.~~

~~2. Make available performance measures, benefit design, and premium cost data from health plans licensed pursuant to chapter 627 or chapter 641. The agency shall determine which health care~~

~~quality measures and member and subscriber cost data to disclose, based upon input from the council. When determining which data to disclose, the agency shall consider information that may be required by either individual or group purchasers to assess the value of the product, which may include membership satisfaction, quality of care, current enrollment or membership, coverage areas, accreditation status, premium costs, plan costs, premium increases, range of benefits, copayments and deductibles, accuracy and speed of claims payment, credentials of physicians, number of providers, names of network providers, and hospitals in the network. Health plans shall make available to the agency such data or information that is not currently reported to the agency or the office.~~

~~3. Determine the method and format for public disclosure of data reported pursuant to this paragraph. The agency shall make its determination based upon input from the State Consumer Health Information and Policy Advisory Council. At a minimum, the data shall be made available on the agency's Internet website in a manner that allows consumers to conduct an interactive search that allows them to view and compare the information for specific providers. The website must include such additional information as is determined necessary to ensure that the website enhances informed decisionmaking among consumers and health care purchasers, which shall include, at a minimum, appropriate guidance on how to use the data and an explanation of why the data may vary from provider to provider.~~

~~4. Publish on its website undiscounted charges for no fewer than 150 of the most commonly performed adult and pediatric procedures, including outpatient, inpatient, diagnostic, and~~

~~preventative procedures.~~

~~(4) TECHNICAL ASSISTANCE.—~~

~~(a) The center shall provide technical assistance to persons or organizations engaged in health planning activities in the effective use of statistics collected and compiled by the center. The center shall also provide the following additional technical assistance services:~~

~~1. Establish procedures identifying the circumstances under which, the places at which, the persons from whom, and the methods by which a person may secure data from the center, including procedures governing requests, the ordering of requests, timeframes for handling requests, and other procedures necessary to facilitate the use of the center's data. To the extent possible, the center should provide current data timely in response to requests from public or private agencies.~~

~~2. Provide assistance to data sources and users in the areas of database design, survey design, sampling procedures, statistical interpretation, and data access to promote improved health-care-related data sets.~~

~~3. Identify health care data gaps and provide technical assistance to other public or private organizations for meeting documented health care data needs.~~

~~4. Assist other organizations in developing statistical abstracts of their data sets that could be used by the center.~~

~~5. Provide statistical support to state agencies with regard to the use of databases maintained by the center.~~

~~6. To the extent possible, respond to multiple requests for information not currently collected by the center or available from other sources by initiating data collection.~~

~~7. Maintain detailed information on data maintained by other local, state, federal, and private agencies in order to advise those who use the center of potential sources of data which are requested but which are not available from the center.~~

~~8. Respond to requests for data which are not available in published form by initiating special computer runs on data sets available to the center.~~

~~9. Monitor innovations in health information technology, informatics, and the exchange of health information and maintain a repository of technical resources to support the development of a health information network.~~

~~(b) The agency shall administer, manage, and monitor grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information network. Any grant contract shall be evaluated to ensure the effective outcome of the health information project.~~

~~(c) The agency shall initiate, oversee, manage, and evaluate the integration of health care data from each state agency that collects, stores, and reports on health care issues and make that data available to any health care practitioner through a state health information network.~~

~~(5) PUBLICATIONS; REPORTS; SPECIAL STUDIES.—The center shall provide for the widespread dissemination of data which it collects and analyzes. The center shall have the following publication, reporting, and special study functions:~~

~~(a) The center shall publish and make available periodically to agencies and individuals health statistics~~

~~publications of general interest, including health plan consumer reports and health maintenance organization member satisfaction surveys; publications providing health statistics on topical health policy issues; publications that provide health status profiles of the people in this state; and other topical health statistics publications.~~

(j) ~~(b) The center shall publish,~~ Make available~~, and disseminate, promptly and as widely as practicable,~~ the results of special health surveys, health care research, and health care evaluations conducted or supported under this section. ~~Any publication by the center must include a statement of the limitations on the quality, accuracy, and completeness of the data.~~

~~(c) The center shall provide indexing, abstracting, translation, publication, and other services leading to a more effective and timely dissemination of health care statistics.~~

~~(d) The center shall be responsible for publishing and disseminating an annual report on the center's activities.~~

~~(e) The center shall be responsible, to the extent resources are available, for conducting a variety of special studies and surveys to expand the health care information and statistics available for health policy analyses, particularly for the review of public policy issues. The center shall develop a process by which users of the center's data are periodically surveyed regarding critical data needs and the results of the survey considered in determining which special surveys or studies will be conducted. The center shall select problems in health care for research, policy analyses, or special data collections on the basis of their local, regional, or state~~

~~importance; the unique potential for definitive research on the problem; and opportunities for application of the study findings.~~

(4)~~(6)~~ PROVIDER DATA REPORTING.—This section does not confer on the agency the power to demand or require that a health care provider or professional furnish information, records of interviews, written reports, statements, notes, memoranda, or data other than as expressly required by law. The agency may not establish an all-payor claims database or a comparable database without express legislative authority.

(5)~~(7)~~ BUDGET; FEES.—

(a) The Legislature intends that funding for the Florida Center for Health Information and Transparency ~~Policy Analysis~~ be appropriated from the General Revenue Fund.

(b) The Florida Center for Health Information and Transparency ~~Policy Analysis~~ may apply for and receive and accept grants, gifts, and other payments, including property and services, from any governmental or other public or private entity or person and make arrangements as to the use of same, including the undertaking of special studies and other projects relating to health-care-related topics. Funds obtained pursuant to this paragraph may not be used to offset annual appropriations from the General Revenue Fund.

(c) The center may charge such reasonable fees for services as the agency prescribes by rule. The established fees may not exceed the reasonable cost for such services. Fees collected may not be used to offset annual appropriations from the General Revenue Fund.

(6)~~(8)~~ STATE CONSUMER HEALTH INFORMATION AND POLICY

ADVISORY COUNCIL.—

(a) There is established in the agency the State Consumer Health Information and Policy Advisory Council to assist the center ~~in reviewing the comprehensive health information system, including the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities and to recommend improvements for purposes of public health, policy analysis, and transparency of consumer health care information~~. The council consists ~~shall consist~~ of the following members:

1. An employee of the Executive Office of the Governor, to be appointed by the Governor.

2. An employee of the Office of Insurance Regulation, to be appointed by the director of the office.

3. An employee of the Department of Education, to be appointed by the Commissioner of Education.

4. Ten persons, to be appointed by the Secretary of Health Care Administration, representing other state and local agencies, state universities, business and health coalitions, local health councils, professional health-care-related associations, consumers, and purchasers.

(b) Each member of the council shall be appointed to serve for a term of 2 years following the date of appointment~~, except the term of appointment shall end 3 years following the date of appointment for members appointed in 2003, 2004, and 2005~~. A vacancy shall be filled by appointment for the remainder of the term, and each appointing authority retains the right to reappoint members whose terms of appointment have expired.

(c) The council may meet at the call of its chair, at the request of the agency, or at the request of a majority of its membership, but the council must meet at least quarterly.

(d) Members shall elect a chair and vice chair annually.

(e) A majority of the members constitutes a quorum, and the affirmative vote of a majority of a quorum is necessary to take action.

(f) The council shall maintain minutes of each meeting and shall make such minutes available to any person.

(g) Members of the council shall serve without compensation but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(h) The council's duties and responsibilities include, but are not limited to, the following:

1. To develop a mission statement, goals, and a plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities.

2. To develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data.

3. To create ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the council.

(7)~~(9)~~ APPLICATION TO OTHER AGENCIES.~~ Nothing in~~ This section does not ~~shall~~ limit, restrict, affect, or control the collection, analysis, release, or publication of data by any state agency pursuant to its statutory authority, duties, or responsibilities.

Section 7. Subsection (1) of section 408.061, Florida

Statutes, is amended to read:

408.061 Data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.—

(1) The agency shall require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the agency's duties and to facilitate transparency in health care pricing data and quality measures. Specifications for data to be collected under this section shall be developed by the agency and applicable contract vendors, with the assistance of technical advisory panels including representatives of affected entities, consumers, purchasers, and such other interested parties as may be determined by the agency.

(a) Data submitted by health care facilities, including the facilities as defined in chapter 395, shall include, but are not limited to: case-mix data, patient admission and discharge data, hospital emergency department data which shall include the number of patients treated in the emergency department of a licensed hospital reported by patient acuity level, data on hospital-acquired infections as specified by rule, data on complications as specified by rule, data on readmissions as specified by rule, with patient and provider-specific identifiers included, actual charge data by diagnostic groups or other bundled groupings as specified by rule, financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, depreciation expenses based on the expected useful life of the property and equipment involved, and

demographic data. The agency shall adopt nationally recognized risk adjustment methodologies or software consistent with the standards of the Agency for Healthcare Research and Quality and as selected by the agency for all data submitted as required by this section. Data may be obtained from documents such as, but not limited to: leases, contracts, debt instruments, itemized patient statements or bills, medical record abstracts, and related diagnostic information. Reported data elements shall be reported electronically in accordance with rule 59E-7.012, Florida Administrative Code. Data submitted shall be certified by the chief executive officer or an appropriate and duly authorized representative or employee of the licensed facility that the information submitted is true and accurate.

(b) Data to be submitted by health care providers may include, but are not limited to: professional organization and specialty board affiliations, Medicare and Medicaid participation, types of services offered to patients, actual charges to patients as specified by rule, amount of revenue and expenses of the health care provider, and such other data which are reasonably necessary to study utilization patterns. Data submitted shall be certified by the appropriate duly authorized representative or employee of the health care provider that the information submitted is true and accurate.

(c) Data to be submitted by health insurers may include, but are not limited to: claims, payments to health care facilities and health care providers as specified by rule, premium, administration, and financial information. Data submitted shall be certified by the chief financial officer, an appropriate and duly authorized representative, or an employee

of the insurer that the information submitted is true and accurate.

(d) Data required to be submitted by health care facilities, health care providers, or health insurers may ~~shall~~ not include specific provider contract reimbursement information. However, such specific provider reimbursement data shall be reasonably available for onsite inspection by the agency as is necessary to carry out the agency's regulatory duties. Any such data obtained by the agency as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) A requirement to submit data shall be adopted by rule if the submission of data is being required of all members of any type of health care facility, health care provider, or health insurer. Rules are not required, however, for the submission of data for a special study mandated by the Legislature or when information is being requested for a single health care facility, health care provider, or health insurer.

Section 8. Section 456.0575, Florida Statutes, is amended to read:

456.0575 Duty to notify patients.—

(1) Every licensed health care practitioner 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 shall not constitute an acknowledgment of admission of liability, nor can

such notifications be introduced as evidence.

(2) Every licensed health care practitioner must provide upon request by a patient, before providing any nonemergency medical services in a facility licensed under chapter 395, a written, good faith estimate of reasonably anticipated charges to treat the patient's condition at the licensed facility. The health care practitioner must provide the estimate to the patient within 7 business days after receiving the request and is not required to adjust the estimate for any potential insurance coverage. The health care practitioner must inform the patient that he or she may contact his or her health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The health care practitioner must provide information to uninsured patients and insured patients for whom the practitioner is not a network provider or preferred provider which discloses the practitioner's financial assistance policy, including the application process, payment plans, discounts, and other available assistance; the practitioner's charity care policy; and the practitioner's collection procedures. Such estimate does not preclude the actual charges from exceeding the estimate. Failure to provide the estimate in accordance with this subsection, without good cause, within the 7 business days shall result in disciplinary action against the health care practitioner and a fine of $500 for each instance of the practitioner's failure to provide the requested estimate.

Section 9. Paragraph (oo) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(oo) Failure to comply with fair billing practices pursuant to s. 627.0613(6).

Section 10. Section 627.0613, Florida Statutes, is amended to read:

627.0613 Consumer advocate.—The Chief Financial Officer must appoint a consumer advocate who must represent the general public of the state before the department, ~~and~~ the office, and other state agencies, as required by this section. The consumer advocate must report directly to the Chief Financial Officer, but is not otherwise under the authority of the department or of any employee of the department. The consumer advocate has such powers as are necessary to carry out the duties of the office of consumer advocate, including, but not limited to, the powers to:

(1) Recommend to the department or office, by petition, the commencement of any proceeding or action; appear in any proceeding or action before the department or office; or appear in any proceeding before the Division of Administrative Hearings relating to subject matter under the jurisdiction of the department or office.

(2) Report to the Agency for Health Care Administration and to the Department of Health any findings resulting from investigation of unresolved complaints concerning the billing practices of any health care facility licensed under chapter 395 or any health care practitioner subject to chapter 456.

(3)~~(2)~~ Have access to and use of all files, records, and data of the department or office.

(4) Have access to any files, records, and data of the Agency for Health Care Administration and the Department of Health which are necessary for the investigations authorized by subsection (6).

(5)~~(3)~~ Examine rate and form filings submitted to the office, hire consultants as necessary to aid in the review process, and recommend to the department or office any position deemed by the consumer advocate to be in the public interest.

(6) Maintain a process for receiving and investigating complaints from insured and uninsured patients of health care facilities licensed under chapter 395 and health care practitioners subject to chapter 456 concerning billing practices. Investigations by the office of the consumer advocate shall be limited to determining compliance with the following requirements:

(a) The patient was informed before a nonemergency procedure of expected payments related to the procedure as provided in s. 395.301, contact information for health insurers or health maintenance organizations to determine specific cost-sharing responsibilities, and the expected involvement in the procedure of other providers who may bill independently.

(b) The patient was informed of policies and procedures to qualify for discounted charges.

(c) The patient was informed of collection procedures and given the opportunity to participate in an extended payment schedule.

(d) The patient was given a written, personal, and itemized estimate upon request as provided in ss. 395.301 and 456.0575.

(e) The statement or bill delivered to the patient was

accurate and included all information required pursuant to s. 395.301.

(f) The billed amounts were fair charges. As used in this paragraph, the term "fair charges" means the common and frequent range of charges for patients who are similarly situated requiring the same or similar medical services.

(7) Provide mediation between providers and patients to resolve billing complaints and negotiate arrangements for extended payment schedules.

(8)~~(4)~~ Prepare an annual budget for presentation to the Legislature by the department, which budget must be adequate to carry out the duties of the office of consumer advocate.

Section 11. Section 627.6385, Florida Statutes, is created to read:

627.6385 Disclosures to policyholders; calculations of cost sharing.—

(1) Each health insurer shall make available on its website:

(a) A method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities for health care services and procedures. Such method of making an estimate shall be based on service bundles established pursuant to s. 408.05(3)(c). Estimates do not preclude the actual copayment, coinsurance percentage, or deductible, whichever is applicable, from exceeding the estimate.

1. Estimates shall be calculated according to the policy and known plan usage during the coverage period.

2. Estimates shall be made available based on providers that are in-network or out-of-network.

3. A policyholder must be able to create estimates by any combination of the service bundles established pursuant to s. 408.05(3)(c) or by a specified provider or a comparison of providers.

(b) A method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities based on a personalized estimate of charges received from a facility pursuant to s. 395.301 or a practitioner pursuant to s. 456.0575.

(c) A hyperlink to the health information, including, but not limited to, service bundles and quality of care information, which is disseminated by the Agency for Health Care Administration pursuant to s. 408.05(3).

(2) Each health insurer shall include in every policy delivered or issued for delivery to any person in the state or in materials provided as required by s. 627.64725 notice that the information required by this section is available electronically and the address of the website where the information can be accessed.

(3) Each health insurer that participates in the state group health insurance plan created pursuant to s. 110.123 or Medicaid managed care pursuant to part IV of chapter 409 shall provide all claims data to the fullest extent possible to the contracted vendor selected by the Agency for Health Care Administration under s. 408.05(3)(c).

(4) Each health insurer that provides all claims data to the fullest extent possible to the contracted vendor under s. 408.05(3)(c) is entitled to a 0.05 percent credit against the premium tax established pursuant to s. 624.509, notwithstanding

any premium tax credit limitation imposed by s. 624.509.

Section 12. Subsection (6) and present subsection (7) of section 641.54, Florida Statutes, are amended, present subsection (7) of that section is redesignated as subsection (9), and a new subsection (7) and subsection (8) are added to that section, to read:

641.54 Information disclosure.—

(6) Each health maintenance organization shall make available to its subscribers on its website or by request the estimated copayment ~~copay~~, coinsurance percentage, or deductible, whichever is applicable, for any covered services as described by the searchable bundles established on a consumer-friendly, Internet-based platform pursuant to s. 408.05(3)(c) or as described in a personalized estimate received from a facility pursuant to s. 395.301 or a practitioner pursuant to s. 456.0575, the status of the subscriber's maximum annual out-of-pocket payments for a covered individual or family, and the status of the subscriber's maximum lifetime benefit. Such estimate does ~~shall~~ not preclude the actual copayment ~~copay~~, coinsurance percentage, or deductible, whichever is applicable, from exceeding the estimate.

(7) Each health maintenance organization that participates in the state group health insurance plan created pursuant to s. 110.123 or Medicaid managed care pursuant to part IV of chapter 409 shall provide all claims data to the fullest extent possible to the contracted vendor selected by the Agency for Health Care Administration under s. 408.05(3)(c).

(8) Each health maintenance organization that provides all claims data to the fullest extent possible to the contracted

vendor under s. 408.05(3)(c) is entitled to a 0.05 percent credit against the premium tax established pursuant to s. 624.509, notwithstanding any premium tax credit limitation imposed by s. 624.509.

(9)~~(7)~~ Each health maintenance organization shall make available on its ~~Internet~~ website a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the Agency for Health Care Administration pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~ and shall include in every policy delivered or issued for delivery to any person in the state or any materials provided as required by s. 627.64725 notice that such information is available electronically and the address of its Internet website.

Section 13. Paragraph (n) is added to subsection (2) of section 409.967, Florida Statutes, to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(n) *Transparency.*—Managed care plans shall comply with ss. 627.6385(3) and 641.54(7).

Section 14. Paragraph (d) of subsection (3) of section 110.123, Florida Statutes, is amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(d)1. Notwithstanding ~~the provisions of~~ chapter 287 and the authority of the department, for the purpose of protecting the health of, and providing medical services to, state employees

participating in the state group insurance program, the department may contract to retain the services of professional administrators for the state group insurance program. The agency shall follow good purchasing practices of state procurement to the extent practicable under the circumstances.

2. Each vendor in a major procurement, and any other vendor if the department deems it necessary to protect the state's financial interests, shall, at the time of executing any contract with the department, post an appropriate bond with the department in an amount determined by the department to be adequate to protect the state's interests but not higher than the full amount estimated to be paid annually to the vendor under the contract.

3. Each major contract entered into by the department pursuant to this section shall contain a provision for payment of liquidated damages to the department for material noncompliance by a vendor with a contract provision. The department may require a liquidated damages provision in any contract if the department deems it necessary to protect the state's financial interests.

4. Section ~~The provisions of s.~~ 120.57(3) applies ~~apply~~ to the department's contracting process, except:

a. A formal written protest of any decision, intended decision, or other action subject to protest shall be filed within 72 hours after receipt of notice of the decision, intended decision, or other action.

b. As an alternative to any provision of s. 120.57(3), the department may proceed with the bid selection or contract award process if the director of the department sets forth, in

writing, particular facts and circumstances which demonstrate the necessity of continuing the procurement process or the contract award process in order to avoid a substantial disruption to the provision of any scheduled insurance services.

5. The department shall make arrangements as necessary to provide claims data of the state group health insurance plan to the contracted vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

6. Each contracted vendor for the state group health insurance plan shall provide claims data to the fullest extent possible to the vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

Section 15. Effective January 1, 2017, section 212.099, Florida Statutes, is created to read:

212.099 Health information and transparency tax credit.—

(1) As used in this section, the term:

(a) "Eligible employee" means an employee who is employed in this state by an eligible employer and is covered under the eligible employer's health plan covered by the Employee Retirement Income Security Act of 1974.

(b) "Eligible employer" means an employer that provides a health plan covered by the Employee Retirement Income Security Act of 1974 to eligible employees and provides qualifying health care claims information submissions on a quarterly basis.

(c) "Qualifying health care claims information submission" means the submission of health care claims information on eligible employees to the contract vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

(2) A credit against the tax imposed by this chapter is

authorized for qualifying health care claims information submissions made by an eligible employer. The credit is equal to the number of eligible employees included on each qualifying health care claims information submission multiplied by $50. The total credit that may be claimed by an eligible employer under this section is $500,000 annually.

(3) If the credit under this section is greater than can be taken on a single tax return, excess amounts may be taken as credits on any return submitted within 12 months after the submission of the qualifying health care claims information.

(4) A corporation may take the credit under this section against its corporate income tax liability, as provided in s. 220.197; however, a corporation that uses its credit against the tax imposed by chapter 220 may not receive the credit provided in this section. A credit may be taken against only one tax.

(5) Any person who fraudulently claims this credit is liable for repayment of the credit plus a mandatory penalty of 100 percent of the credit and commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 16. Effective January 1, 2017, section 220.197, Florida Statutes, is created to read:

220.197 Health information and transparency tax credit.—

(1) As used in this section, the term:

(a) "Eligible employee" means an employee who is employed in this state by an eligible employer and is covered under the eligible employer's health plan covered by the Employee Retirement Income Security Act of 1974.

(b) "Eligible employer" means an employer that provides a

health plan covered by the Employee Retirement Income Security Act of 1974 to eligible employees and provides qualifying health care claims information submissions on a quarterly basis.

(c) "Qualifying health care claims information submission" means the submission of health care claims information on eligible employees to the contract vendor selected by the Agency for Health Care Administration pursuant to s. 408.05(3)(c).

(2) A credit against the tax imposed by this chapter is authorized for quarterly qualifying health care claims information submissions made by an eligible employer. The credit is equal to the number of eligible employees included on each qualifying health care claims information submission multiplied by $50. The credit must be claimed on the next annual return filed by the corporation under this chapter. The total credit that may be claimed by a corporation under this section is $500,000 annually.

(3) If the credit under this section is greater than can be taken on a single tax return, excess amounts may be carried forward for a period not to exceed 5 years.

(4) The credit provided for in this section may be taken on a consolidated return; however, the total credit taken by the affiliated group is subject to the limitation established under subsection (2).

(5) A corporation may take the credit under this section against its sales tax liability, as provided in s. 212.099; however, a corporation that uses its credit against the tax imposed by chapter 212 may not receive the credit provided in this section. A credit may be taken against only one tax.

(6) Any person who fraudulently claims this credit is

liable for repayment of the credit plus a mandatory penalty of 100 percent of the credit and commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 17. Subsection (3) of section 20.42, Florida Statutes, is amended to read:

20.42 Agency for Health Care Administration.—

(3) The department shall be the chief health policy and planning entity for the state. The department is responsible for health facility licensure, inspection, and regulatory enforcement; investigation of consumer complaints related to health care facilities and managed care plans; the implementation of the certificate of need program; the operation of the Florida Center for Health Information and Transparency ~~Policy Analysis~~; the administration of the Medicaid program; the administration of the contracts with the Florida Healthy Kids Corporation; the certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641; and any other duties prescribed by statute or agreement.

Section 18. Paragraph (c) of subsection (4) of section 381.026, Florida Statutes, is amended to read:

381.026 Florida Patient's Bill of Rights and Responsibilities.—

(4) RIGHTS OF PATIENTS.—Each health care facility or provider shall observe the following standards:

(c) *Financial information and disclosure.*—

1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a

representative of the health care facility full information and necessary counseling on the availability of known financial resources for the patient's health care.

2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before treatment, whether the health care provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

3. A primary care provider may publish a schedule of charges for the medical services that the provider offers to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office and must include, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.

4. If a primary care provider publishes a schedule of charges pursuant to subparagraph 3., he or she must continually

post it at all times for the duration of active licensure in this state when primary care services are provided to patients. If a primary care provider fails to post the schedule of charges in accordance with this subparagraph, the provider shall be required to pay any license fee and comply with any continuing education requirements for which an exemption was received.

5. A health care provider or a health care facility shall, upon request, furnish a person, before the provision of medical services, a reasonable estimate of charges for such services. The health care provider or the health care facility shall provide an uninsured person, before the provision of a planned nonemergency medical service, a reasonable estimate of charges for such service and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. Such estimates by a primary care provider must be consistent with the schedule posted under subparagraph 3. Estimates shall, to the extent possible, be written in language comprehensible to an ordinary layperson. Such reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.

6. Each licensed facility, except a facility operating exclusively as a state mental health treatment facility or as a mobile surgical facility, ~~not operated by the state~~ shall make available to the public on its Internet website or by other electronic means a description of and a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the agency pursuant to s. 408.05(3)

~~s. 408.05(3)(k)~~. The facility shall place a notice in the reception area that such information is available electronically and the website address. The licensed facility may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's statement or bill may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for eligible patients based upon the patient's ability to pay.

7. A patient has the right to receive a copy of an itemized statement or bill upon request. A patient has a right to be given an explanation of charges upon request.

Section 19. Paragraph (e) of subsection (2) of section 395.602, Florida Statutes, is amended to read:

395.602 Rural hospitals.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Rural hospital" means an acute care hospital licensed under this chapter, having 100 or fewer licensed beds and an emergency room, which is:

1. The sole provider within a county with a population density of up to 100 persons per square mile;

2. An acute care hospital, in a county with a population density of up to 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;

3. A hospital supported by a tax district or subdistrict whose boundaries encompass a population of up to 100 persons per square mile;

4. A hospital with a service area that has a population of up to 100 persons per square mile. As used in this subparagraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the agency; or

5. A hospital designated as a critical access hospital, as defined in s. 408.07.

Population densities used in this paragraph must be based upon the most recently completed United States census. A hospital that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this paragraph shall be granted such designation upon application, including supporting documentation, to the agency. A hospital that was licensed as a rural hospital during the 2010-2011 or 2011-2012 fiscal year shall continue to be a rural hospital from the date of designation through June 30, 2021, if the hospital continues to have up to 100 licensed beds and an emergency room.

Section 20. Section 395.6025, Florida Statutes, is amended to read:

395.6025 Rural hospital replacement facilities.—

Notwithstanding ~~the provisions of~~ s. 408.036, a hospital defined as a statutory rural hospital in accordance with s. 395.602, or a not-for-profit operator of rural hospitals, is not required to obtain a certificate of need for the construction of a new hospital located in a county with a population of at least 15,000 but no more than 18,000 and a density of fewer ~~less~~ than 30 persons per square mile, or a replacement facility, provided that the replacement, or new, facility is located within 10 miles of the site of the currently licensed rural hospital and within the current primary service area. As used in this section, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the Agency for Health Care Administration.

Section 21. Subsection (43) of section 408.07, Florida Statutes, is amended to read:

408.07 Definitions.—As used in this chapter, with the exception of ss. 408.031-408.045, the term:

(43) "Rural hospital" means an acute care hospital licensed under chapter 395, having 100 or fewer licensed beds and an emergency room, and which is:

(a) The sole provider within a county with a population density of no greater than 100 persons per square mile;

(b) An acute care hospital, in a county with a population density of no greater than 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from another acute care

hospital within the same county;

(c) A hospital supported by a tax district or subdistrict whose boundaries encompass a population of 100 persons or fewer per square mile;

(d) A hospital with a service area that has a population of 100 persons or fewer per square mile. As used in this paragraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center for Health Information and Transparency ~~Policy Analysis~~ at the Agency for Health Care Administration; or

(e) A critical access hospital.

Population densities used in this subsection must be based upon the most recently completed United States census. A hospital that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2015, if the hospital continues to have 100 or fewer licensed beds and an emergency room. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this subsection shall be granted such designation upon application, including supporting documentation, to the Agency for Health Care Administration.

Section 22. Paragraph (a) of subsection (4) of section 408.18, Florida Statutes, is amended to read:

408.18 Health Care Community Antitrust Guidance Act; antitrust no-action letter; market-information collection and

education.—

(4)(a) Members of the health care community who seek antitrust guidance may request a review of their proposed business activity by the Attorney General's office. In conducting its review, the Attorney General's office may seek whatever documentation, data, or other material it deems necessary from the Agency for Health Care Administration, the Florida Center for Health Information and Transparency ~~Policy Analysis~~, and the Office of Insurance Regulation of the Financial Services Commission.

Section 23. Section 465.0244, Florida Statutes, is amended to read:

465.0244 Information disclosure.—Every pharmacy shall make available on its ~~Internet~~ website a hyperlink ~~link~~ to the health information ~~performance outcome and financial data~~ that is disseminated ~~published~~ by the Agency for Health Care Administration pursuant to s. 408.05(3) ~~s. 408.05(3)(k)~~ and shall place in the area where customers receive filled prescriptions notice that such information is available electronically and the address of its Internet website.

Section 24. Except as otherwise expressly provided in this act, this act shall take effect July 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 Appropriations

BILL:	CS/SB 1508
INTRODUCER:	Community Affairs Committee and Senator Simpson
SUBJECT:	Airport Zoning
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Favorable**
2.	Cochran	Yeatman	CA	**Fav/CS**
3.	Sneed	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1508 substantially revises chapter 333, Florida Statutes, containing airport zoning provisions relating to the management of airspace and land use at or near airports. Generally, the bill:

- Updates statutory definitions and terms in accordance with federal regulations.
- Streamlines the current local airport protection zoning process to a simpler permitting model.
- Provides local governments the flexibility to structure and incorporate the airport protection zoning review process into existing local zoning review processes and repeals duplicative requirements for obtaining a variance.
- Makes other grammatical, editorial, and conforming changes.

The bill is expected to have an indeterminate, but positive fiscal impact resulting from simplification and streamlining of state and local airport zoning processes.

The bill takes effect July 1, 2016.

II. Present Situation:

Due to the extensive chapter revision, the present situation for each section of the bill is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Airport Zoning

Chapter 333, F.S., contains airport zoning provisions relating to the management of airspace and land use at or near airports. Generally, the chapter:

- Addresses permitting for structures exceeding federal obstruction standards;
- Requires adoption of certain airport zoning regulations;
- Provides a process for seeking variances from the zoning regulations;
- Sets out a process for appeal of decisions based on the zoning regulations;
- Requires boards of adjustment to hear and decide appeals;
- Provides for judicial review of any board of adjustment decision; and
- Establishes penalties and remedies for violations.

The Florida Department of Transportation (FDOT) in 2012 created a stakeholder working group to address problems with implementing this chapter. Representatives from airports, local planning and zoning departments, the Florida Defense Alliance, the League of Cities, the Florida Airports Council, the real estate development community, and the FDOT participated in the working group. The FDOT advises that ch. 333, F.S., "contains outdated and inconsistent provisions when compared to applicable federal regulations, contains internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing."[1]

The FDOT advises it expects no substantive changes as a result of the bill's proposed revisions; e.g., the existing requirements for issuance of permits are substantively unchanged. The number of permits issued or denied is not expected to change. Rather, the changes are designed to facilitate more uniform permitting, appeals, and review processes applied at the local level and provide clarity and predictability for those subject to airport zoning regulations.[2]

Definitions

Present Situation

Section 333.01, F.S., contains definitions related to airport zoning that need updating for internal chapter consistency and for consistency with federal regulations.

Effect of Proposed Changes

Section 1 amends s. 333.01, F.S., to provide, revise, and delete definitions to:

- Reflect terminology used in federal regulations;
- Provide for consistency with Federal Aviation Administration (FAA) advisements;
- Remove antiquated terminology;
- Delete variances from definitions to reflect the streamlined permitting process effected in the bill; and

[1] *See* the FDOT 2015 Agency Proposal, *Airspace and Land Use at Public Airports*, p. 1. (On file in the Senate Transportation Committee).
[2] Conversation with FDOT Legislative and Legal Staff during joint meeting with Senate and House staff, January 30, 2015.

- Otherwise provide clarity through editorial and grammatical changes.

Permitting for Structures Exceeding Federal Obstruction Standards

Present Situation

The Code of Federal Regulations (CFR) sets forth standards for structures that present a hazard within an area in an airport due to obstruction of the airspace required for aircraft to take off, maneuver, or land.[3] Section 333.025, F.S., requires a permit from the FDOT for any proposed construction or alteration of a structure that would exceed the federal standards.[4] A permit from the FDOT is not required if a political subdivision[5] has adopted adequate airspace protection regulations and filed them with the FDOT.

The FDOT must issue or deny a permit within 30 days of receipt of an application for any structure that would exceed the federal obstruction standards. The FDOT is prohibited from approving a permit unless the applicant submits both documentation showing compliance with federal notification requirements and a valid aeronautical evaluation.

Effect of Proposed Changes

Section 2 amends s. 333.025, F.S., to replace the term "geographic center" with "airport reference point," which is located at the approximate geometric center of all usable runways and to update references to current federal regulations.

If a political subdivision has adopted adequate airport protection zoning regulations, placed the regulations on file with the FDOT, *and* the political subdivision has established a permitting process, a permit from the FDOT is not required for construction or alteration of an obstruction. Upon receipt of a complete permit application, the local government must provide a copy of the application to the FDOT. The bill provides a 15-day FDOT review period following receipt of the application, which must run concurrently with the established local permitting process.

The FDOT is required to review permit applications in conformity with s. 120.60, F.S., relating to licensing. The list of factors to be considered by the FDOT is revised to remove ambiguity and duplication, and to provide clarity. The FDOT must require the owner of a permitted obstruction to install, operate, and maintain marking and lighting in conformance with FAA standards, at the owner's expense. The denial of a permit is subjected to the administrative review provisions of the Administrative Procedures Act.

Adoption of Airport Zoning Regulations

Present Situation

Section 333.03, F.S., requires political subdivisions with an airport hazard area[6] to adopt, administer, and enforce airport zoning regulations for the area. If the airport is owned or

[3] *See* 14 C.F.R. part 77, subpart C (2015).
[4] Public airports are licensed under the provisions of ch. 330, F.S.
[5] Generally, a local governmental entity, see s. 333.01(9), F.S.
[6] The bill redefines "airport hazard" to mean an obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities. The definition of

controlled by a political subdivision and has a hazard area outside of its territorial limits, the political subdivision and the political subdivision within which the hazard area is located must either adopt zoning regulations by interlocal agreement or create a joint airport zoning board with the power to do so. The airport zoning regulations must, at a minimum, require:

- A variance for any structure that would exceed the federal obstruction standards;
- Obstruction marking and lighting per s. 333.07(3), F.S.;
- Documentation of compliance with federal proposed construction notification and a valid aeronautical evaluation submitted by each person applying for a variance;
- Consideration of the same factors when determining whether to issue or deny a variance as required of the FDOT when considering permit applications; and
- No variance be approved solely on the basis that a structure will not exceed the federal obstruction standards.

The FDOT is required to issue copies of the federal obstruction standards in the CFR to each political subdivision with an airport hazard area, and issue certain airport zoning maps at no cost.

Interim land use compatibility zoning regulations must be adopted and must consider whether sanitary landfills are located within certain areas and whether any landfill will attract or sustain hazardous bird movements. If a public-use airport has conducted a federal noise study, residential construction and educational facilities are prohibited within the area. If no study is conducted, the same construction is prohibited within a certain distance.

Airport zoning regulations restricting new incompatible uses within runway clear zones must be adopted. Certain limited exceptions for construction of educational facilities in specified areas are authorized.

Effect of Proposed Changes

Section 3 amends s. 333.03, F.S., to eliminate the duplicative requirement for obtaining a variance for structures that would exceed federal obstruction standards, in favor of a local permitting process. Every political subdivision having an airport hazard area is required to adopt airport *protection* zoning regulations. In addition to editorial and grammatical revisions, this section revises language to:

- Replace citations to the federal obstruction standards contained in the CFR with terminology used in the CFR; i.e., permits for the "construction or alteration of any obstruction."
- Remove the FDOT's duty to provide copies of the federal obstruction standards contained in the CFR and to issue maps, and replace it with making the FDOT available to provide assistance with respect to the standards.
- Update citations to the CFR.
- Eliminate the reporting requirements related to birds at airports near landfills in favor of requiring the landfill operator to incorporate bird management techniques.
- Include substantial modification of existing incompatible uses in the required adopted regulations restricting such uses within runway *protection* zones.

"obstruction" is revised, also to reflect terminology used in the federal standards for determining obstructions. "Airport hazard area" is redefined in the bill to mean any area of land or water upon which an airport hazard might be established.

- Remove the limited exceptions for construction of educational facilities when a noise study has been conducted in accordance with the federal regulations.
- Delete outdated language.
- Authorize an airport authority, local government, or other governing body operating a public-use airport to adopt more restrictive airport protection zoning regulations, per the FDOT, to allow restrictions appropriate to the local context of the airport.[7]

Guidelines Regarding Land Use near Airports

Present Situation

Section 333.065, F.S., requires the FDOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports. The guidelines must use certain acceptable and established quantitative measures.

Effect of Proposed Changes

Section 7 repeals s. 333.065, F.S. The FDOT advises the deletion reflects completion of the FDOT Airport Compatible Land Use Guidebook.[8]

Permits, Variances, and Appeals

Present Situation

Section 333.07, F.S., authorizes any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired. All such regulations must require a permit before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted.

If a nonconforming use, structure, or tree has been abandoned or is more than 80 percent torn down or deteriorated, a permit may not be issued under certain conditions. The owner of a nonconforming structure or tree may be compelled, at the owner's expense, to undergo certain actions to conform.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the adopted airport zoning regulations is authorized to apply to a board of adjustment for a variance from the regulations. Conditions for allowance of variations are provided. The FDOT is authorized to appeal any variance granted and to apply for judicial relief.

As a condition of any granted permit or variance, the administrative agency or board of adjustment must require the structure or tree owner to install, operate, and maintain at the

[7] *See* the FDOT document provided to staff, *Proposed ch. 333, F.S. Amendments and Legislative Support Documentation*. (On file in the Senate Transportation Committee.)
[8] *Id.*

owner's expense marking and lighting necessary to indicate to aircraft pilots the presence of an obstruction.

Section 333.08, F.S., authorizes any affected person or taxpayer; or any governing body of a political subdivision, the FDOT, or any joint airport zoning board, to appeal any decision of an administrative agency in its administration of adopted airport zoning regulations to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

Effect of Proposed Changes

Section 8 amends s. 333.07, F.S., to streamline the permitting process, repeal the duplicative variance process, and facilitate implementation of the permitting process by local entities. More specifically, rather than authorizing any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired, the bill simply requires a permit to construct, alter, or allow an airport obstruction in an airport hazard area in violation of the adopted airport protection zoning regulations.

The political subdivision or its administrative agency must consider virtually the same standards as must be considered by the FDOT when issuing or denying a permit for structures exceeding federal obstruction standards. All variance provisions are removed in favor of the permitting process. In addition, provisions relating to a lien resulting from an owner's failure to take action to bring a nonconforming structure or tree into regulatory compliance are removed. The FDOT 45-day comment period is removed in favor of the shortened 15-day period of review for technical consistency described above. Obstruction marking and lighting is required in conformance with specific standards established by the FAA. Outdated language is repealed.

Section 9 repeals s. 333.08, F.S., authorizing and providing requirements for appeals of zoning regulation decisions, in favor of relocated, modified appeals language in s. 333.09, F.S.

Administration of Airport Zoning Regulations

Present Situation

Section 333.09, F.S., requires all adopted airport zoning regulations to provide for administration and enforcement by an administrative agency; by any official, board, or other existing agency of the political subdivision adopting the regulations; or by one of the subdivisions that participated in creating a joint airport zoning board adopting the regulations. The duties of any such administrative agency include hearing and deciding all permits under s. 333.07, F.S., but not any of the powers delegated to the board of adjustment.

Section 333.10, F.S., currently requires all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances.

Effect of Proposed Changes

Section 10 amends s. 333.09, F.S., to remove the list of entities that may be an administrative agency, per the FDOT, to reflect correct community planning terminology.[9] Administration and enforcement is left to the affected political subdivision or its administrative agency. Also removed is the prohibition against an administrative agency exercising the powers delegated to the board of adjustment.

Political subdivisions required to adopt airport zoning regulations must establish a process to:
- Issue or deny permits consistent with s. 333.07, F.S.;
- Provide the FDOT with a copy of a complete permit application; and
- Enforce the issuance or denial of a permit or other determination made by the administrative agency with respect to airport zoning regulations.

Appeals must be taken within a reasonable time, as provided by the political subdivision or its administrative agency, by filing a notice of appeal. An appeal stays all proceedings in the underlying action, unless the entity from which the appeal is taken certifies that a stay would cause imminent peril to life or property.

The political subdivision or its administrative agency must set a reasonable time for the hearing of appeals and decide appeals within a reasonable time. A party may appear in person, by agent, or by attorney. The subdivision or agency may affirm, reverse, or modify the decision on the permit or other determination from which the appeal is taken.

Section 11 repeals s. 333.10, F.S., currently requiring all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances, in favor of the local government permitting and appeals process established by the bill in revised s. 333.09, F.S.

Judicial Review

Present Situation

Section 333.11, F.S., authorizes any person aggrieved or any taxpayer affected by a decision of a board of adjustment, any governing body of a political subdivision, the FDOT, any joint airport zoning board, or any administrative agency to apply for judicial relief in the judicial circuit court where the board of adjustment is located. The section provides procedural provisions related to the board of adjustment, describes the court's authorized review of a decision by a board of adjustment, and prohibits judicial review of decisions other than decision of a board of adjustment.

Effect of Proposed Changes

Section 12 amends s. 333.11, F.S., to allow any person, political subdivision, or joint airport zoning board affected by a decision of a political subdivision or its administrative agency to apply for judicial relief and to remove references to the board of adjustment, but otherwise leaves the authorization to apply for judicial review in place. The judicial review prohibition is revised.

[9] *Supra* note 7.

An appellant is required to exhaust all remedies through application for local government permits, exceptions, and appeals before seeking judicial review.

Transition Provisions

Section 15 of the bill creates s. 333.135, F.S., to:

- Provide that any airport zoning regulation in effect on July 1, 2016, and in conflict with the revised ch. 333, F.S., must be amended to conform by July 1, 2017.
- Require any political subdivision with an airport that has not adopted airport zoning regulations to do so by July 1, 2017, consistent with the revised chapter.
- Require the FDOT to administer the permitting process as provided in s. 333.025, F.S., for political subdivisions that have not yet adopted the required regulations.

Technical Revisions

Sections 4, 5, 6, 13, and 14, amending ss. 333.04, 333.05, 333.06, 333.12, and 333.13, F.S., respectively, primarily make grammatical and editorial revisions to existing language and modify sections of the chapter for internal consistency with definitions.

Section 16 repeals s. 333.14, F.S., containing the short title of ch. 333, F.S., the "Airport Zoning Law of 1945."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1508, according to the FDOT, property owners near airports and property development businesses should benefit from a more timely, consistent, and predictable land development process. The bill's revisions to ch. 333, F.S., are intended to save

property owners and businesses time and resources, while protecting the airspace and state aviation facilities from encroachment.[10]

C. Government Sector Impact:

According to the FDOT, by restructuring the local government process away from zoning variances to local permitting, uniformity with state permitting provisions is facilitated and local governments are granted flexibility to implement the bill's provisions consistent with existing local zoning enforcement processes and structures.[11]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 333.01, 333.025, 333.03, 333.04, 333.05, 333.06, 333.07, 333.09, 333.11, 333.12, and 333.13.

This bill creates section 333.135 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 333.065, 333.08, 333.10, and 333.14.

IX. Additional Information:

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

CS by Community Affairs on February 16, 2016:

- Removes the inappropriate use of the word "protection" from the title of s. 333.03, F.S; and
- Adjusts an improper reference in s. 333.03(1)(b), F.S., for technical accuracy.

B. Amendments:

None.

[10] *Supra* note 7.
[11] *Id.*

By the Committee on Community Affairs; and Senator Simpson

578-03640-16 20161508c1

A bill to be entitled

An act relating to airport zoning; amending s. 333.01, F.S.; defining and redefining terms; amending s. 333.025, F.S.; revising the requirements relating to permits required for obstructions; requiring certain existing, planned, and proposed facilities to be protected from airport hazards; requiring the local government to provide a copy of a complete permit application to the Department of Transportation's aviation office, subject to certain requirements; requiring the department to have a specified review period following receipt of such application; providing exemptions from such review under certain circumstances; revising the circumstances under which the department issues or denies a permit; revising the department's requirements before a permit is issued; revising the circumstances under which the department is prohibited from approving a permit; providing that the denial of a permit is subject to administrative review; amending s. 333.03, F.S.; conforming provisions to changes made by the act; revising the circumstances under which a political subdivision owning or controlling an airport and another political subdivision adopt, administer, and enforce airport protection zoning regulations or create a joint airport protection zoning board; revising the provisions relating to airport protection zoning regulations and joint airport protection zoning boards; requiring the department to be available to provide assistance to political subdivisions regarding federal obstruction standards; deleting provisions relating to certain duties of the department; revising

578-03640-16 20161508c1

provisions relating to airport land use compatibility zoning regulations; revising construction; providing applicability; amending s. 333.04, F.S.; authorizing certain airport zoning regulations to be incorporated in and made a part of comprehensive plans and policies, rather than a part of comprehensive zoning regulations, under certain circumstances; revising requirements relating to applicability; amending s. 333.05, F.S.; revising procedures for adoption of airport zoning regulations; amending s. 333.06, F.S.; revising airport zoning regulation requirements; repealing s. 333.065, F.S., relating to guidelines regarding land use near airports; amending s. 333.07, F.S.; revising requirements relating to local government permitting of airspace obstructions; requiring a person proposing to construct, alter, or allow an airport obstruction to apply for a permit under certain circumstances; revising the circumstances under which a permit is prohibited from being issued; revising the circumstances under which the owner of a nonconforming structure is required to alter such structure to conform to the current airport protection zoning regulations; deleting provisions relating to variances from zoning regulations; requiring a political subdivision or its administrative agency to consider specified criteria in determining whether to issue or deny a permit; revising the requirements for marking and lighting in conformance with certain standards; repealing s.

333.08, F.S., relating to appeals of decisions concerning airport zoning regulations; amending s. 333.09, F.S.; revising the requirements relating to the administration of airport protection zoning regulations; requiring all airport protection zoning regulations to provide for the administration and enforcement of such regulations by the political subdivision or its administrative agency; requiring a political subdivision adopting airport zoning regulations to provide a permitting process, subject to certain requirements; requiring a zoning board or permitting body to implement the airport zoning regulation permitting and appeals process if such board or body already exists within a political subdivision; authorizing a person, a political subdivision or its administrative agency, or a specified joint zoning board to use the process established for an appeal, subject to certain requirements; repealing s. 333.10, F.S., relating to boards of adjustment provided for by airport zoning regulations; amending s. 333.11, F.S.; revising the requirements relating to judicial review; amending s. 333.12, F.S.; revising requirements relating to the acquisition of air rights; amending s. 333.13, F.S.; conforming provisions to changes made by the act; creating s. 333.135, F.S.; requiring conflicting airport zoning regulations in effect on a specified date to be amended to conform to certain requirements; requiring certain political subdivisions to adopt

certain airport zoning regulations by a specified date; requiring the department to administer a specified permitting process for certain political subdivisions; repealing s. 333.14, F.S., relating to a short title; providing an effective date.

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

Section 1. Section 333.01, Florida Statutes, is amended to read:

333.01 Definitions.—As used in ~~For the purpose of~~ this chapter, the term ~~following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires~~:

(1) "Aeronautical study" means a Federal Aviation Administration study, conducted in accordance with the standards of 14 C.F.R. part 77, subpart C, and Federal Aviation Administration policy and guidance, on the effect of proposed construction or alteration upon the operation of air navigation facilities and the safe and efficient use of navigable airspace.

~~(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.~~

(2) "Airport" means any area of land or water designed and

set aside for the landing and taking off of aircraft and used ~~utilized~~ or to be used ~~utilized~~ in the interest of the public for such purpose.

(3) "Airport hazard" means an obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities ~~any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23,77.25, 77.28, and 77.29 and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing or is otherwise hazardous to such taking off, maneuvering, or landing of aircraft and for which no person has previously obtained a permit or variance pursuant to s. 333.025 or s. 333.07~~.

(4) "Airport hazard area" means any area of land or water upon which an airport hazard might be established ~~if not prevented as provided in this chapter~~.

(5) "Airport land use compatibility zoning" means airport zoning regulations governing ~~restricting~~ the use of land on, adjacent to, or in the immediate vicinity of airports ~~in the manner enumerated in s. 333.03(2) to activities and purposes compatible with the continuation of normal airport operations including landing and takeoff of aircraft in order to promote public health, safety, and general welfare~~.

(6) "Airport layout plan" means a set of scaled drawings that provide a graphic representation of the existing and future development plan for the airport and demonstrate the preservation and continuity of safety, utility, and efficiency of the airport ~~detailed, scale engineering drawing, including~~

~~pertinent dimensions, of an airport's current and planned facilities, their locations, and runway usage~~.

(7) "Airport master plan" means a comprehensive plan of an airport which typically describes current and future plans for airport development designed to support existing and future aviation demand.

(8) "Airport protection zoning regulations" means airport zoning regulations governing airport hazards.

(9) "Department" means the Department of Transportation as created under s. 20.23.

(10) "Educational facility" means any structure, land, or use that includes a public or private kindergarten through 12th grade school, charter school, magnet school, college campus, or university campus. The term does not include space used for educational purposes within a multi-tenant building.

(11) "Landfill" has the same meaning as provided in s. 403.703.

(12) ~~(7)~~ "Obstruction" means any existing or proposed ~~manmade object or~~ object, ~~of natural growth or~~ terrain, or structure construction or alteration that exceeds ~~violates~~ the federal obstruction standards contained in 14 C.F.R. part 77, subpart C ~~ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~. The term includes:

(a) Any object of natural growth or terrain;

(b) Permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus; or

(c) Alteration of any permanent or temporary existing structure by a change in the structure's height, including

appurtenances, lateral dimensions, and equipment or materials used in the structure.

(13) ~~(8)~~ "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(14) ~~(9)~~ "Political subdivision" means the local government of any county, municipality ~~city~~, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(15) "Public-use airport" means an airport, publicly or privately owned, licensed by the state, which is open for use by the public.

(16) ~~(10)~~ "Runway protection ~~clear~~ zone" means an area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground ~~a runway clear zone as defined in 14 C.F.R. s. 151.9(b)~~.

(17) ~~(11)~~ "Structure" means any object~~,~~ constructed, erected, altered, or installed ~~by humans~~, including, but not limited to ~~without limitation thereof~~, buildings, towers, smokestacks, utility poles, power generation equipment, and overhead transmission lines.

(18) "Substantial modification" means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

~~(12) "Tree" includes any plant of the vegetable kingdom.~~

Section 2. Section 333.025, Florida Statutes, is amended to read:

333.025 Permit required for obstructions ~~structures exceeding federal obstruction standards~~.—

(1) A person proposing the construction or alteration ~~In order to prevent the erection~~ of an obstruction must obtain a permit from the department ~~structures dangerous to air navigation~~, subject to ~~the provisions of~~ subsections (2), (3), and (4)~~, each person shall secure from the Department of Transportation a permit for the erection, alteration, or modification of any structure the result of which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~. However, permits from the department ~~of Transportation~~ will be required only within an airport hazard area where federal obstruction standards are exceeded and if the proposed construction or alteration is within a 10-nautical-mile radius of the airport reference point, located at the approximate geometric ~~geographical~~ center of all usable runways of a public-use airport or ~~a publicly owned or operated airport, a~~ military airport~~, or an airport licensed by the state for public use~~.

(2) Existing, planned, and proposed ~~Affected airports will be considered as having those~~ facilities on public-use airports contained in an ~~which are shown on the~~ airport master plan, in ~~or~~ an airport layout plan submitted to the Federal Aviation Administration, ~~Airport District Office~~ or in comparable military documents shall~~, and will~~ be ~~so~~ protected from airport hazards. ~~Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the Federal~~

~~Aviation Administration or to the Department of Transportation shall also be protected.~~

(3) A permit is not required for existing structures that ~~requirements of subsection (1) shall not apply to projects which~~ received construction permits from the Federal Communications Commission for structures exceeding federal obstruction standards before ~~prior to~~ May 20, 1975~~, provided such structures now exist~~; a permit is not required for ~~nor shall it apply to previously approved structures now existing, or~~ any necessary replacement or repairs to such existing structures if~~, so long as~~ the height and location are ~~is~~ unchanged.

(4) If ~~When~~ political subdivisions have, in compliance with this chapter, adopted adequate airport ~~airspace~~ protection zoning regulations, placed ~~in compliance with s. 333.03, and~~ such regulations ~~are~~ on file with the department's aviation office, and established a permitting process ~~Department of Transportation~~, a permit for the construction or alteration of an obstruction is ~~such structure shall~~ not ~~be~~ required from the department ~~of Transportation~~. Upon receipt of a complete permit application, the local government shall provide a copy of the application to the department's aviation office by certified mail, return receipt requested, or by a delivery service that provides a receipt evidencing delivery. To evaluate technical consistency with this subsection, the department shall have a 15-day review period following receipt of the application, which must run concurrently with the local government permitting process. Cranes, construction equipment, and other temporary structures in use or in place for a period not to exceed 18 consecutive months are exempt from the department's review,

unless such review is requested by the department.

(5) The department ~~of Transportation~~ shall, within 30 days after ~~of the~~ receipt of an application for a permit, issue or deny a permit for the construction or ~~erection,~~ alteration~~, or modification~~ of an obstruction ~~any structure the result of which would exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~. The department shall review permit applications in conformity with s. 120.60.

(6) In determining whether to issue or deny a permit, the department shall consider:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c) ~~(a)~~ The nature of the terrain and height of existing structures.

~~(b) Public and private interests and investments.~~

(d) The effect of the construction or alteration of an obstruction on the state licensing standards for a public-use airport contained in chapter 330 and rules adopted thereunder.

(e) ~~(c)~~ The character of existing and planned flight ~~flying~~ operations and ~~planned~~ developments at public-use ~~of~~ airports.

(f) ~~(d)~~ Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.

(g) ~~(c)~~ The effect of ~~Whether~~ the construction or alteration of an obstruction on ~~the proposed structure would cause an increase in~~ the minimum descent altitude or the decision height at the affected airport.

~~(f) Technological advances.~~

~~(g) The safety of persons on the ground and in the air.~~

~~(h) Land use density.~~

~~(i) The safe and efficient use of navigable airspace.~~

(h)~~(j)~~ The cumulative effects on navigable airspace of all existing obstructions ~~structures, proposed structures identified in the applicable jurisdictions' comprehensive plans,~~ and all ~~other~~ known proposed obstructions ~~structures~~ in the area.

(7) When issuing a permit under this section, the department ~~of Transportation~~ shall~~, as a specific condition of such permit,~~ require the owner ~~obstruction marking and lighting~~ of the obstruction to install, operate, and maintain, at the owner's expense, marking and lighting in conformance with the specific standards established by the Federal Aviation Administration ~~permitted structure as provided in s. 333.07(3)(b)~~.

(8) The department may ~~of Transportation shall~~ not approve a permit for the construction or alteration ~~erection~~ of an obstruction ~~a structure~~ unless the applicant submits ~~both~~ documentation showing both compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study. A ~~evaluation, and no~~ permit may not ~~shall~~ be approved solely on the basis that the Federal Aviation Administration determined that the ~~such~~ proposed construction or alteration of an obstruction was not an airport hazard ~~structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation~~.

(9) The denial of a permit under this section is subject to administrative review pursuant to chapter 120.

Section 3. Section 333.03, Florida Statutes, is amended to

read:

333.03 Requirement ~~Power~~ to adopt airport zoning regulations.—

(1)(a) ~~In order to prevent the creation or establishment of airport hazards,~~ Every political subdivision having an airport hazard area within its territorial limits shall~~, by October 1, 1977,~~ adopt, administer, and enforce, under the police power and in the manner and upon the conditions ~~hereinafter~~ prescribed in this section, airport protection zoning regulations for such airport hazard area.

(b) If ~~Where~~ an airport is owned or controlled by a political subdivision and if any other political subdivision has land upon which an obstruction may be constructed or altered which underlies any surface of the airport as provided in 14 C.F.R. part 77, subpart C, the political subdivisions ~~airport hazard area appertaining to such airport is located wholly or partly outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located,~~ shall either:

1. By interlocal agreement, ~~in accordance with the provisions of chapter 163,~~ adopt, administer, and enforce a set of airport protection zoning regulations ~~applicable to the airport hazard area in question~~; or

2. By ordinance, regulation, or resolution duly adopted, create a joint airport protection zoning board that~~, which board~~ shall ~~have the same power to~~ adopt, administer, and enforce a set of airport protection zoning regulations ~~applicable to the airport hazard area in question as that vested in paragraph (a)~~

~~in the political subdivision within which such area is located~~. The ~~Each such~~ joint airport protection zoning board shall have as voting members two representatives appointed by each participating political subdivision ~~participating in its creation~~ and ~~in addition~~ a chair elected by a majority of the members so appointed. ~~However,~~ The airport manager or a representative of each airport in ~~managers of~~ the affected participating political subdivisions shall serve on the board in a nonvoting capacity.

(c) Airport protection zoning regulations adopted under paragraph (a) must ~~shall~~, at ~~as~~ a minimum, require:

1. A permit ~~variance~~ for the construction or ~~erection,~~ alteration~~, or modification~~ of any obstruction ~~structure which would cause the structure to exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~;

2. Obstruction marking and lighting for obstructions ~~structures as specified in s. 333.07(3)~~;

3. Documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a valid aeronautical study ~~evaluation~~ submitted by each person applying for a permit ~~variance~~;

4. Consideration of the criteria in s. 333.025(6), when determining whether to issue or deny a permit ~~variance~~; and

5. That approval of a permit not be based ~~no variance shall be approved~~ solely on the determination by the Federal Aviation Administration ~~basis~~ that the ~~such~~ proposed structure is not an airport hazard ~~will not exceed federal obstruction standards as~~

~~contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation~~.

(d) The department shall be available to provide assistance to political subdivisions regarding federal obstruction standards ~~shall issue copies of the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 to each political subdivision having airport hazard areas and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients~~.

(2) In the manner provided in subsection (1), political subdivisions shall adopt, administer, and enforce ~~interim~~ airport land use compatibility zoning regulations ~~shall be adopted~~. Airport land use compatibility zoning ~~When political subdivisions have adopted land development~~ regulations shall, at a minimum, ~~in accordance with the provisions of chapter 163 which~~ address the ~~use of land in the manner consistent with the provisions herein, adoption of airport land use compatibility regulations pursuant to this subsection shall not be required. Interim airport land use compatibility zoning regulations shall consider the~~ following:

(a) The prohibition of new landfills and the restriction of existing landfills ~~Whether sanitary landfills are located~~ within the following areas:

1. Within 10,000 feet from the nearest point of any runway used or planned to be used by turbine ~~turbojet or turboprop~~ aircraft.

2. Within 5,000 feet from the nearest point of any runway used ~~only~~ by only nonturbine ~~piston-type~~ aircraft.

3. Outside the perimeters defined in subparagraphs 1. and 2., but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. s. 77.19 ~~part 77.25~~. Case-by-case review of such landfills is advised.

(b) Where ~~Whether~~ any landfill is located and constructed in a manner ~~so~~ that ~~it~~ attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across, the runways or approach and departure patterns of aircraft. The landfill operator must ~~political subdivision shall request from the airport authority or other governing body operating the airport a report on such bird feeding or roosting areas that at the time of the request are known to the airport. In preparing its report, the authority, or other governing body, shall consider whether the landfill will~~ incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. ~~The airport authority or other governing body shall respond to the political subdivision no later than 30 days after receipt of such request.~~

(c) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has conducted a noise study in accordance with ~~the provisions of~~ 14 C.F.R. part 150, or where a public-use airport owner has established noise contours pursuant to another public study approved by the Federal Aviation Administration, the prohibition of incompatible uses, as established in the noise study in 14 C.F.R. part 150, Appendix A or as a part of an alternative Federal Aviation Administration-approved public study, within the noise contours

established by any of these studies, except if such uses are specifically contemplated by such study with appropriate mitigation or similar techniques described in the study ~~neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction by 14 C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies~~.

(d) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has not conducted a noise study, the prohibition of ~~neither~~ residential construction and ~~nor~~ any educational facility ~~as defined in chapter 1013~~, with the exception of aviation school facilities, ~~shall be permitted~~ within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

(e) ~~(3)~~ The restriction of ~~In the manner provided in subsection (1), airport zoning regulations shall be adopted which restrict~~ new incompatible uses, activities, or substantial modifications to existing incompatible uses ~~construction~~ within runway protection ~~clear~~ zones~~, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds~~. ~~Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned,~~

~~public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location.~~

~~(4) The procedures outlined in subsections (1), (2), and (3) for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.~~

(3)~~(5)~~ Political subdivisions shall provide ~~The Department of Transportation shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning code.~~ a copy of all ~~local~~ airport protection zoning ~~codes, rules, and~~ regulations and airport land use compatibility zoning regulations, and any related amendments ~~and proposed and granted variances thereto~~, to ~~shall be filed with~~ the department's aviation office within 30 days after adoption ~~department~~.

(4)~~(6) Nothing in~~ Subsection (2) may not ~~or subsection (3) shall~~ be construed to require the removal, alteration, sound conditioning, or other change, or to interfere with the continued use or adjacent expansion of any educational facility ~~structure~~ or site in existence on July 1, 1993~~, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, as of~~

~~July 1, 1993~~.

(5) This section does not prohibit an airport authority, a political subdivision or its administrative agency, or any other governing body operating a public-use airport from establishing airport zoning regulations more restrictive than prescribed in this section in order to protect the health, safety, and welfare of the public in the air and on the ground.

Section 4. Section 333.04, Florida Statutes, is amended to read:

333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.—

(1) INCORPORATION.—In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive plan or policy ~~zoning ordinance~~ regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive plan or policy ~~zoning regulations~~, and be administered and enforced in connection therewith.

(2) CONFLICT.—In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or vegetation ~~trees~~, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision that ~~which~~ adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Section 5. Section 333.05, Florida Statutes, is amended to

read:

333.05 Procedure for adoption of airport zoning regulations.—

(1) NOTICE AND HEARING.—~~No~~ Airport zoning regulations may not ~~shall~~ be adopted, amended, or repealed ~~changed~~ under this chapter except by action of the legislative body of the political subdivision or affected subdivisions ~~in question~~, or the joint board provided in s. 333.03(1)(b)2. ~~s. 333.03(1)(b)~~ by the political subdivisions ~~bodies~~ therein provided and set forth, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published at least once a week for 2 consecutive weeks in a newspaper ~~an official paper, or a paper~~ of general circulation~~,~~ in the political subdivision or subdivisions where ~~in which are located~~ the airport zoning regulations are ~~areas~~ to be adopted, amended, or repealed ~~zoned~~.

(2) AIRPORT ZONING COMMISSION.—Before ~~Prior to~~ the initial zoning of any airport area under this chapter, the political subdivision or joint airport zoning board that ~~which~~ is to adopt, administer, and enforce the regulations must ~~shall~~ appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board may ~~shall~~ not hold its public hearings or take any action until it has received the final report of such commission, and at least 15 days shall elapse between the

receipt of the final report of the commission and the hearing to be held by the latter board. If ~~Where~~ a planning ~~city plan~~ commission, an airport commission, or a comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Section 6. Section 333.06, Florida Statutes, is amended to read:

333.06 Airport zoning regulation requirements.—

(1) REASONABLENESS.—All airport zoning regulations adopted under this chapter shall be reasonable and may not ~~none shall~~ impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area and runway protection ~~clear~~ zones, the character of the neighborhood, the uses to which the property to be zoned is put and adaptable, and the impact of any new use, activity, or construction on the airport's operating capability and capacity.

(2) INDEPENDENT JUSTIFICATION.—The purpose of all airport zoning regulations adopted under this chapter is to provide both airspace protection and land uses ~~use~~ compatible with airport operations. Each aspect of this purpose requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway protection ~~clear~~ zone which does not exceed airspace height restrictions is not conclusive ~~evidence per se~~ that such

use, activity, or construction is compatible with airport operations.

(3) NONCONFORMING USES.—An ~~No~~ airport protection zoning regulation ~~regulations~~ adopted under this chapter may not ~~shall~~ require the removal, lowering, or other change or alteration of any obstruction ~~structure or tree~~ not conforming to the regulation ~~regulations~~ when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

(4) ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED LOCAL GOVERNMENTS.—An airport master plan shall be prepared by each public-use ~~publicly owned and operated~~ airport licensed by the department ~~of Transportation~~ under chapter 330. The authorized entity having responsibility for governing the operation of the airport, when either requesting from or submitting to a state or federal governmental agency with funding or approval jurisdiction a "finding of no significant impact," an environmental assessment, a site-selection study, an airport master plan, or any amendment to an airport master plan, shall submit simultaneously a copy of said request, submittal, assessment, study, plan, or amendments by certified mail to all affected local governments. As used in ~~For the purposes of~~ this subsection, the term "affected local government" is defined as any municipality ~~city~~ or county having jurisdiction over the airport and any municipality ~~city~~ or county located within 2 miles of the boundaries of the land subject to the airport master plan.

Section 7. Section 333.065, Florida Statutes, is repealed.

Section 8. Section 333.07, Florida Statutes, is amended to

read:

333.07 Local government permitting of airspace obstructions ~~Permits and variances~~.—

(1) PERMITS.—

(a) A person proposing to construct, alter, or allow an airport obstruction in an airport hazard area in violation of the airport protection zoning regulations adopted under this chapter must apply for a permit. A ~~Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No~~ permit may not ~~shall~~ be issued if it ~~granted that~~ would allow the establishment or creation of an airport hazard or if it would permit a nonconforming obstruction ~~structure or tree or nonconforming use to be made or become higher or~~ to become a greater hazard to air navigation than it was when the applicable airport protection zoning regulation was adopted which allowed the establishment or creation of the obstruction, or than it is when the application for a permit is made.

(b) If ~~Whenever~~ the political subdivision or its administrative agency determines that a nonconforming obstruction ~~use or nonconforming structure or tree~~ has been

abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, a ~~no~~ permit may not ~~shall~~ be granted if it ~~that~~ would allow the obstruction ~~said structure or tree~~ to exceed the applicable height limit or otherwise deviate from the airport protection zoning regulations.~~, and,~~ Whether or not an application is made for a permit under this subsection ~~or not~~, ~~the said agency may by appropriate action, compel~~ the owner of the nonconforming obstruction may be required ~~structure or tree~~, at his or her own expense, to lower, remove, reconstruct, alter, or equip such obstruction ~~object~~ as may be necessary to conform to the current airport protection zoning regulations. If the owner of the nonconforming obstruction neglects or refuses ~~structure or tree shall neglect or refuse~~ to comply with such requirement ~~order~~ for 10 days after notice ~~thereof~~, the administrative ~~said~~ agency may report the violation to the political subdivision involved ~~therein~~, which subdivision, through its appropriate agency, may proceed to have the obstruction ~~object~~ so lowered, removed, reconstructed, altered, or equipped~~,~~ and assess the cost and expense thereof upon the owner of the obstruction ~~object~~ or the land whereon it is or was located~~, and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85~~.

~~(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.~~

(2) CONSIDERATIONS WHEN ISSUING OR DENYING PERMITS.—In determining whether to issue or deny a permit, the political subdivision or its administrative agency must consider the following, as applicable:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c) The nature of the terrain and height of existing structures.

(d) The effect of the construction or alteration on the state licensing standards for a public-use airport contained in chapter 330 and rules adopted thereunder.

(e) The character of existing and planned flight operations and developments at public-use airports.

(f) Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.

(g) The effect of the construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.

(h) The cumulative effects on navigable airspace of all existing structures and all other known proposed structures in the area.

(i) Additional requirements adopted by the political subdivision or administrative agency pertinent to evaluation and protection of airspace and airport operations.

~~(2) VARIANCES.—~~

~~(a) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the airport zoning regulations adopted under this chapter or any land development regulation adopted pursuant to the provisions of chapter 163 pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations in question. At the time of filing the application, the applicant shall forward to the department by certified mail, return receipt requested, a copy of the application. The department shall have 45 days from receipt of the application to comment and to provide its comments or waiver of that right to the applicant and the board of adjustment. The department shall include its explanation for any objections stated in its comments. If the department fails to provide its comments within 45 days of receipt of the application, its right to comment is waived. The board of adjustment may proceed with its consideration of the application only upon the receipt of the department's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the board. Noncompliance with this section shall be grounds to appeal pursuant to s. 333.08 and to apply for judicial relief pursuant to s. 333.11. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this chapter. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.~~

~~(b) The Department of Transportation shall have the authority to appeal any variance granted under this chapter pursuant to s. 333.08, and to apply for judicial relief pursuant to s. 333.11.~~

(3) OBSTRUCTION MARKING AND LIGHTING.—

~~(a)~~ In issuing a ~~granting any~~ permit ~~or variance~~ under this section, the political subdivision or its administrative agency ~~or board of adjustment~~ shall require the owner of the obstruction ~~structure or tree in question~~ to install, operate, and maintain thereon, at his or her own expense, ~~such~~ marking and lighting in conformance with the specific standards established by the Federal Aviation Administration ~~as may be necessary to indicate to aircraft pilots the presence of an obstruction~~.

~~(b) Such marking and lighting shall conform to the specific standards established by rule by the Department of Transportation.~~

~~(c) Existing structures not in compliance on October 1, 1988, shall be required to comply whenever the existing marking requires refurbishment, whenever the existing lighting requires replacement, or within 5 years of October 1, 1988, whichever occurs first.~~

Section 9. Section 333.08, Florida Statutes, is repealed.

Section 10. Section 333.09, Florida Statutes, is amended to read:

333.09 Administration of airport protection zoning

regulations.—

(1) ADMINISTRATION.—All airport protection zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by the political subdivision or its administrative agency ~~an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment~~. The duties of any administrative agency designated pursuant to this chapter must ~~shall~~ include that of hearing and deciding all permits under s. 333.07 ~~s. 333.07(1), deciding all matters under s. 333.07(3)~~, as they pertain to such agency, and all other matters under this chapter applying to said agency~~, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment~~.

(2) LOCAL GOVERNMENT PROCESS.—

(a) A political subdivision required to adopt airport zoning regulations under this chapter shall provide a process to:

1. Issue or deny permits consistent with s. 333.07.

2. Provide the department with a copy of a complete application consistent with s. 333.025(4).

3. Enforce the issuance or denial of a permit or other determination made by the administrative agency with respect to airport zoning regulations.

(b) If a zoning board or permitting body already exists within a political subdivision, the zoning board or permitting body may implement the airport zoning regulation permitting and appeals processes.

(3) APPEALS.—

(a) A person, a political subdivision or its administrative agency, or a joint airport zoning board that contends a decision made by a political subdivision or its administrative agency is an improper application of airport zoning regulations may use the process established for an appeal.

(b) All appeals taken under this section must be taken within a reasonable time, as provided by the political subdivision or its administrative agency, by filing with the entity from which the appeal is taken a notice of appeal specifying the grounds for appeal.

(c) An appeal shall stay all proceedings in the underlying action appealed from, unless the entity from which the appeal is taken certifies pursuant to the rules for appeal that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings may not be stayed except by order of the political subdivision or its administrative agency on notice to the entity from which the appeal is taken and for good cause shown.

(d) The political subdivision or its administrative agency shall set a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.

(e) The political subdivision or its administrative agency may, in conformity with this chapter, affirm, reverse, or modify the decision on the permit or other determination from which the appeal is taken.

Section 11. Section 333.10, Florida Statutes, is repealed.

Section 12. Section 333.11, Florida Statutes, is amended to read:

333.11 Judicial review.—

(1) Any person, ~~aggrieved, or taxpayer affected, by any decision of~~ ~~a board of adjustment, or any governing body of a~~ political subdivision, or ~~the Department of Transportation or any~~ joint airport zoning board affected by a decision of a political subdivision~~,~~ or its ~~of any~~ administrative agency ~~hereunder,~~ may apply for judicial relief to the circuit court in the judicial circuit where the political subdivision ~~board of adjustment~~ is located within 30 days after rendition of the decision ~~by the board of adjustment~~. Review shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

~~(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.~~

~~(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall~~

~~concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.~~

(2)~~(4)~~ The court has ~~shall have~~ exclusive jurisdiction to affirm, reverse, or modify~~, or set aside~~ the decision on the permit or other determination from which the appeal is taken ~~brought up for review, in whole or in part,~~ and, if appropriate ~~need be~~, to order further proceedings by the political subdivision or its administrative agency ~~board of adjustment~~. The findings of fact by the political subdivision or its administrative agency ~~board~~, if supported by substantial evidence, shall be accepted by the court as conclusive, and an ~~no~~ objection to a decision of the political subdivision or its administrative agency may not ~~board shall~~ be considered by the court unless such objection was raised in the underlying proceeding ~~shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so~~.

(3)~~(5)~~ If ~~In any case in which~~ airport zoning regulations adopted under this chapter~~, although generally reasonable,~~ are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(4)~~(6)~~ A judicial ~~No~~ appeal to any court may not ~~shall~~ be ~~or is~~ permitted under this section until the appellant has exhausted all of its remedies through application for local government permits, exceptions, and appeals~~, to any courts, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his or her remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court hereunder~~.

Section 13. Section 333.12, Florida Statutes, is amended to read:

333.12 Acquisition of air rights.—If ~~In any case which: it is desired to remove, lower or otherwise terminate~~ a nonconforming obstruction is determined to be an airport hazard and the owner will not remove, lower, or otherwise eliminate it ~~structure or use~~; ~~or~~ the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming obstruction ~~use~~ is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such property, air right, avigation ~~navigation~~ easement, or other estate, portion, or interest in the property or nonconforming obstruction ~~structure~~

~~or use~~ or such interest in the air above such property, ~~tree~~, ~~structure, or use,~~ in question, as may be necessary to effectuate the purposes of this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property, ~~or any~~ easement, or estate or interest therein or the acquisition of the same by the power of eminent domain, the political subdivision making such purchase or exercising such power shall, in addition to the damages for the taking, injury, or destruction of property, also pay the cost of the removal and relocation of any structure or any public utility that ~~which~~ is required to be moved to a new location.

Section 14. Section 333.13, Florida Statutes, is amended to read:

333.13 Enforcement and remedies.—

(1) Each violation of this chapter or of any airport zoning regulations, orders, or rulings adopted ~~promulgated~~ or made pursuant to this chapter shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day a violation continues to exist shall constitute a separate offense.

(2) In addition, the political subdivision or agency adopting the airport zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their

administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction, ~~(~~which may be mandatory,~~)~~ or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

(3) The department ~~of Transportation~~ may institute a civil action for injunctive relief in the appropriate circuit court to prevent violation of any provision of this chapter.

Section 15. Section 333.135, Florida Statutes, is created to read:

333.135 Transition provisions.—

(1) Any airport zoning regulation in effect on July 1, 2016, which includes provisions in conflict with this chapter shall be amended to conform to the requirements of this chapter by July 1, 2017.

(2) Any political subdivision having an airport within its territorial limits which has not adopted airport zoning regulations shall, by July 1, 2017, adopt airport zoning regulations consistent with this chapter.

(3) For those political subdivisions that have not yet adopted airport zoning regulations pursuant to this chapter, the department shall administer the permitting process as provided in s. 333.025.

Section 16. Section 333.14, Florida Statutes, is repealed.

Section 17. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 1528 (460300)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Regulated Industries Committee; and Senator Simpson
SUBJECT:	Illicit Drugs
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	**Fav/CS**
2.	Clodfelter	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 1528 amends the schedule of controlled substances in s. 893.03, Florida Statutes, to describe, by core structure, the following synthetic controlled substances: synthetic cannabinoids; substituted cathinones; substituted phenethylamines; N-benzyl Phenethylamine compounds; substituted tryptamines; and substituted phenylcyclohexylamines. According to the Office of the Attorney General, the class descriptions define these groups of substances by specific core structure to limit the effect that possible alterations to these substances may have to remove a synthetic or designer drug from the list of controlled substances. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill:

- Revises the definition of the term "substantially similar" for the purpose of determining whether a substance is an analog to a controlled substance. The bill defines the term according to the chemical structure of the substance instead of according to its physiological effect. The bill also provides additional factors for determining whether a substance is an analog of a controlled substance to include comparisons to the accepted methods of marketing, distribution, and sales of the substance.
- Revises the chemical terms for existing controlled substances by correcting errors in existing substance listings and deleting double entries. According to the Office of the Attorney

General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

- Creates a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver, certain unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a $500 fine and 100 hours of community service an addition to any other penalty.
- Creates a third degree felony for a person 18 years of age or older who delivers certain illegal controlled substances to a person under the age of 18, who uses or hires a person under the age of 18 in the sale or delivery of such substance, or who uses a person under the age of 18 to assist in avoiding detection for specified violations.
- Creates a second degree felony for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a medical practitioner or pursuant to a valid prescription or order of a medical practitioner while acting in the course of his or her professional practice.
- Provides that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.
- Includes misbranded drugs in the listing of paraphernalia that are deemed to be contraband and subject to civil forfeiture.

The Criminal Justice Impact Conference has determined that the bill will have a positive indeterminate impact on the prison population, meaning that it will increase the prison population by an amount that cannot be quantified. The Department of Legal Affairs expects that any impact of the bill on criminal justice costs, such as increased costs to the Florida Department of Law Enforcement (FDLE) due to requirements to analyze the newly-scheduled drugs, would be short-lived because the market for the drugs will dry up shortly after they become illegal.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The schedules are as follows:

- A Schedule I substance has a high potential for abuse[1] and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.[2]
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples: cocaine and morphine.[3]

[1] "Potential for abuse" means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user's health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user's own initiative rather than on the basis of professional medical advice. s. 893.02(20), F.S.
[2] Section 893.03(1), F.S.
[3] Section 893.03(2), F.S.

- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.[4]
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples: alprazolam; diazepam; and phenobarbital.[5]
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.[6]

A substance is a "controlled substance" if it is listed in any of the five schedules in s. 893.03, F.S. The particular scheduling determines penalties, i.e. which penalties may be imposed for unlawful possession, sale, manufacture, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc.

The sale, manufacture, and delivery of a controlled substance listed in s. 893.03(1)(c), F.S., (Schedule I(c)), as well as the possession with intent to sell, manufacture, or deliver such substance, is considered a third degree felony.[7] However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.[8] For example, selling a controlled substance listed in Schedule I(c) within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.[9] Other prohibited activities include bringing a controlled substance listed in Schedule I(c) into the state and the purchase or possession with intent to purchase such a controlled substance, which are all third degree felonies.[10]

Synthetic Drugs

Synthetic drugs mimic the effects of controlled substances. Synthetic drugs are also known as "new or novel psychoactive substances," or "designer drugs." Synthetic drugs are used to circumvent existing prohibitions on controlled substances. According to the Office of the

[4] Section 893.03(3), F.S.
[5] Section 893.03(4), F.S.
[6] Section 893.03(5), F.S.
[7] Section 893.13(9), F.S., provides that the provisions of s. 893.13(1)-(8), F.S., are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in certain classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties. *See also* s. 893.13(1)(a)2., F.S. A third degree felony is punishable by up to five years in state prison, a fine of up to $5,000, or both. ss. 775.082 and 775.083, F.S.
[8] Section 893.13(1)(c)-(f) and (h), F.S.
[9] Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both.
[10] Section 893.13(5)(b) and (2)(a)2., F.S.

Attorney General, the increasing number of synthetic drug variants available and the higher toxicity of the new variants poses an increasing public health threat.

Concerned about the use of synthetic drugs in Broward County, the State Attorney took the issue to the grand jury. On December 30, 2015, the 17th Judicial Circuit State Attorney's Office released a grand jury report. The report examined the extent of the problem of synthetic drugs in Broward County and made several recommendations, including a recommendation for legislation to address the problem.

The grand jury report attributed more than 60 recent deaths to "Flakka."[11] According to information provided by the Attorney General's Office and the grand jury report, synthetic drugs are typically manufactured in pharmaceutical factories in China or Southeast Asia and are often sold through the internet.

Controlled substance "analogs" are new substances that are not controlled under ch. 893, F.S., but which have a "potential for abuse" and are manufactured, distributed, possessed, and used as substitutes for controlled substances.[12] Controlled substance analogs are treated, for purposes of drug abuse prevention and control, as a controlled substance in Schedule I of s. 893.03, F.S. Section 893.0356(3), F.S., defines the term "potential for abuse" in relation to properties as a central nervous system stimulant, depressant, or hallucinogen. The definition also requires that the substance create a substantial likelihood of being:

(a) Used in amounts that create a hazard to the user's health or the safety of the community;
(b) Diverted from legal channels and distributed through illegal channels; or
(c) Taken on the user's own initiative rather than on the basis of professional medical advice.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

Section 893.0356(3), F.S., provides that the potential for abuse is proven by showing "that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances."

When a new synthetic drug is initially introduced, it may not necessarily be controlled or illegal under state or federal law. The Florida Attorney General may adopt emergency rules to add the new synthetic drug to the controlled substance schedule.[13] The Legislature then can amend the

[11] See *Interim Report of the Broward County Grand Jury, July through December Term, 2015, Synthetic Drug Investigation*, December 30, 2015. A copy of the report is available at: http://www.bbhcflorida.org/sites/default/files/Signed%20Final%20Report-GJ%20Syn%20Drug%20Investigation.pdf (last visited February 4, 2016).
[12] Section 893.0356, F.S.
[13] *See* ss. 893.035 and 893.0356, F.S.

controlled substances schedule to incorporate the new synthetic drug. Since 2011, 136 chemical compounds commonly used to produce synthetic drugs have been added to the schedule of controlled substances, including alpha-PVP, which is the main ingredient in the synthetic form of cathinone drug popularly known as "Flakka."[14]

According to the Office of the Attorney General, the core synthetic drugs of concern in Florida fall into the following categories or classifications:[15]

- Synthetic cannabinoids, such as "K2" or "Spice", which produce a high similar to cannabis;
- Substituted cathinones, commonly sold as "bath salts," which are central nervous system stimulants with stimulant properties related to cathinone, the psychoactive substance found in the shrub Catha edulis (khat) and produce pharmacological effects similar to methamphetamine, amphetamines, cocaine, Khat, LSD, and MDMA (Substituted Cathinones are central nervous system stimulants with no medicinal application and a tendency for dependence);
- Substituted phenethylamines, which mimic the effects of stimulants and/or hallucinogens, including amphetamine, methamphetamine, and MDMA;
- N-benzyl Phenethylamines, which are derivatives of the phenethylamine molecule by substitution that significantly increases the potency of the molecule, and are a potent hallucinogen and alternative to LSD;
- Substituted tryptamines, which are hallucinogenic substances; and
- Substituted phenylcyclohexylamines, which are comparable to PCP intoxication and results in behavioral/psychological effects from neurologic and physiologic abnormalities, stupor, or light or deep coma.

There are other potential classifications of drugs,[16] but according to the Office of the Attorney General, these classifications describe the top designer drugs of concern in Florida.

Approaches to Synthetic Drug Enforcement[17]

Three states, the District of Columbia, and the federal government schedule synthetic cannabinoids using the "neurochemical approach." This approach schedules the substances according to the effect they have on the brain rather than through either the listing of specific

[14] See *Attorney General Pam Bondi News Release*, January 5, 2016, available at: http://www.myfloridalegal.com/newsrel.nsf/newsreleases/0C7B568A9CF4695385257F31005F4485 (last visited February 4, 2016).
[15] The following information is derived from the Summary Bill Analysis provided by the Florida Office of the Attorney General. A copy is on file with the Senate Regulated Industries Committee.
[16] These include: adamantoylindoles, adamantoylindazoles, benzoylindoles, cyclohexylphenols, cyclopropanoylindoles, naphthoylindoles, naphthoylnaphthalenes, naphthoylpyrroles, naphthylmethylindenes, naphthylmethylindoles, phenylacetylindoles, quinolinylindolecarboxylates, tetramethylcyclopropanoylindoles, and tetramethylcyclopropane-thiazole carboxamides. *See* National Alliance for Model State Drug Laws, Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States, 2015. A copy is available at: http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20 (lasted visited February 4, 2016)
[17] For more information on how the federal government and other states and jurisdictions have addressed the issue of synthetic drug enforcement, see Gray, Heather, *Overview of Novel Psychoactive Substances and State Responses*, October 2014 at http://www.wardwebsites.net/conference2014/presentations/gray.pdf (last visited February 4, 2016).

substances or through the use of class definitions.[18] The advantage of scheduling cannabinoids using the neurochemical approach is that states may not need to continually update the schedules of substances each time a new drug is created or introduced. However, there is uncertainty in determining the proof required to obtain a conviction under this method.[19]

Some states use an "analogue approach" to identify synthetic drugs. Under an analogue approach, prosecutors must prove that a substance is both substantially similar structurally to a Schedule I or II controlled substance and that it has either substantially similar effect on the body or that the person represents or intends the substance to have a substantially similar effect on the body as the controlled substance.[20] The advantage of using the analogue approach is that it covers every substance so long as it is structurally similar to a Schedule I or II substance. However, the analogue approach does not provide clear guidance on what constitutes "substantially similar."[21]

Many states use these class definitions to schedule synthetic drugs or specify each novel psychoactive substance individually in the controlled substance schedule by its specific chemical structure or trade/street name. The vast majority of states in the United States use one of these two scheduling approaches or both in combination. The advantage of scheduling substances by class definition is that a prosecutor only needs to prove that the substance falls within a particular class. A prosecutor does not necessary have to prove its structural similarity to another substance or its effect on the body. Most states also include specific substances as examples of the particular class in the definition. The principal disadvantage to scheduling synthetic drugs through a classification approach is that if a substance does not fall within a particular named class and is not otherwise specifically listed, the substance is "legal" until it is particularly scheduled, although the state or federal analogue statute could fill the void until the substance is scheduled.[22]

Among the recommendations in its report, the Broward County Grand Jury recommended that the Legislature adopt a classification system to include synthetic drugs within the existing provisions of s. 893.13, F.S.[23]

Chapter 499 - Florida Drug and Cosmetic Act

The Florida Drug and Cosmetic Act in ch. 499, F.S., consists of three parts that cover drugs, devices, cosmetics, and household products; ether; and medical gas. Section 499.003(18), F.S., defines the term drug to mean an article that is:

> (a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic

[18] National Alliance for Model State Drug Laws, *Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States*, 2015. A copy is available at: http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20 (last visited February 4, 2016).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See* note 11.

> Pharmacopoeia of the United States, or any supplement to any of those publications;
> (b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;
> (c) Intended to affect the structure or any function of the body of humans or other animals; or
> (d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. For purposes of this paragraph, an "active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

Section 499.005, F.S., specifies prohibited acts, including the manufacture, repackaging, sale, delivery, or holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded or has otherwise been rendered unfit for human or animal use.

Section 499.0051, F.S., provides criminal acts and criminal penalties under ch. 499, F.S., including the knowing sale or transfer of a prescription drug to an unauthorized person in a wholesale transaction (second degree felony); the knowing sale or delivery, or possession with intent to sell, contraband prescription drugs (second degree felony); and knowing trafficking in contraband prescription drugs (first degree felony).[24]

III. Effect of Proposed Changes:

Controlled Substances

The bill amends s. 893.02, F.S., to define and revise definitions for chemical terms used in ch. 893, F.S., including "cannabinoid receptor agonist," "homologue," "nitrogen-heterocyclic analog," and "positional isomer."

The bill amends s. 893.03, F.S., to describe, by core structure, the following synthetic controlled substances:

- Synthetic cannabinoids;
- Substituted cathinones;
- Substituted phenethylamines;
- N-benzyl phenethylamine compounds;
- Substituted tryptamines; and

[24] Section 499.003(11), F.S., defines a contraband prescription drug as follows: "any adulterated drug, as defined in s. 499.006, any counterfeit drug, as defined in this section, and also means any prescription drug for which a pedigree paper does not exist, or for which the pedigree paper in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter."

- Substituted phenylcyclohexylamines.

According to the Office of the Attorney General, the class descriptions define these groups of substances by specific core structure to limit the effect that possible alterations to these substances may have in regards to remaining subject to the prohibitions in ch. 893, F.S. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill amends s. 893.0356(3), F.S., to revise the definition of the term "substantially similar" to relate to the chemical structure of the substance. A substance is substantially similar to a controlled substance if it has a single difference in the structural formula that substitutes one atom or functional group for another, including, but not limited to, one halogen for another halogen, one hydrogen for a halogen or vice versa, an alkyl group added or deleted as a side chain to or from a molecule, or an alkyl group added or deleted from a side chain of a molecule.

The bill also amends s. 893.0356(4)(j), F.S., to provide additional factors for determining whether a substance is an analog of a controlled substance, including comparisons to the accepted methods of marketing, distribution, and sales of the substance.

The bill also amends ss. 893.03, 893.033, and 893.135, F.S., to revise the chemical terms for existing substances by correcting errors in existing substance listings and deleting double entries. According to the Office of the Attorney General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

Prohibitions

The bill amends s. 893.13(1)(h), F.S., to create a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver, any unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a $500 fine and 100 hours of community service and is in addition to any other lawful penalty for the offense. This noncriminal penalty refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in the paragraph.

The bill amends s. 893.13(4)(c), F.S., to create a felony of the third degree for a person 18 years of age or older who delivers any illegal controlled substance to a person younger than 18 years of age, who uses or hires a person younger than 18 years of age in the sale or delivery of such substance, or who uses a person younger than 18 years of age to assist in avoiding detection for specified violations. This criminal violation refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in the subsection.

The bill amends s. 921.0022, F.S., to revise the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony

offender whose offense was committed on or after October 1, 1998. The bill revises the chart to include a violation of s. 893.13(4)(c), F.S., as a "Level 3" violation.[25]

The bill amends s. 893.13(6)(d), F.S., to create a felony of the second degree for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a practitioner[26] or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

The bill amends s. 895.02(1)(a)9., F.S., to specify that crimes in s. 499.0051, F.S., relating to misbranded drugs are included in the definition of "racketeering activity."

Nuisance Violations

The bill amends s. 893.0138(2), F.S., to provide that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.

Drug Paraphernalia

The bill amends s. 893.145, F.S., to include misbranded drugs in the listing of paraphernalia that is deemed to be contraband and subject to civil forfeiture.

Effective Date

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[25] The offense severity ranking chart in s. 921.0022, F.S., has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense.

[26] Section 893.02(21), F.S., defines the term "practitioner" to mean "a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed pursuant to chapter 463, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the Attorney General and the Florida Department of Law Enforcement anticipate that, under PCS/CS/SB 1528, the FDLE's Crime Laboratory workload may experience an initial increase in costs associated with the testing of confiscated substances. However, the agencies further anticipate that the increase will be short-lived as the market for the substances is disrupted.

The Criminal Justice Impact Conference determined that CS/SB 1528, as filed, will have a positive indeterminate impact on the prison population, meaning that it will increase the prison population by an amount that cannot be quantified. PCS/CS/SB 1528 likely would have a similar impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.02, 893.03, 893.033, 893.0356, 893.13, 893.135, 893.138, 893.145, 895.02, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 39.01, 316.193, 322.2616, 327.35, 440.102, 456.44, 458.326, 458.3265, 459.0137, 463.0055, 465.0276, 499.0121, 499.029, 782.04, 787.06, 817.563, 831.31, 893.0301, 893.035, 893.05, 893.055, 893.07, 893.12, 893.138, 944.474, 893.149, 397.451, 435.07, 772.12, 775.084, 810.02, 812.014, 831.311, 893.1351, 893.15, 903.133, 921.187, 893.147, 16.56, 655.50, 896.101, and 905.34.

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 February 11, 2016:

The committee substitute includes technical amendments to the description of the chemical properties of certain synthetic cannabinoids.

CS by Regulated Industries on January 27, 2016:
The committee substitute does not amend ss. 561.29 and 569.003, F.S., to require the division to suspend an alcoholic beverage license for one year upon a finding a person has been convicted of a violation of ch. 499, F.S.

B. Amendments:

None.

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

A bill to be entitled

An act relating to illicit drugs; amending s. 893.02, F.S.; defining terms; deleting a definition; revising definitions; amending s. 893.03, F.S.; providing that class designation is a way to reference scheduled controlled substances; adding, deleting, and revising the list of Schedule I controlled substances; revising the list of Schedule III anabolic steroids; amending s. 893.033, F.S.; adding, deleting, and revising the list of precursor and essential chemicals; amending s. 893.0356, F.S.; defining the term "substantially similar"; deleting the term "potential for abuse"; requiring that a controlled substance analog be treated as the highest scheduled controlled substance of which it is an analog; amending s. 893.13, F.S.; creating a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver any unlawful controlled substance in, on, or near an assisted living facility; creating a criminal penalty for a person 18 years of age or older who delivers to a person younger than 18 years of age any illegal controlled substance, who uses or hires a person younger than 18 years of age in the sale or delivery of such substance, or who uses a person younger than 18 years of age to assist in avoiding detection for specified violations; deleting a criminal penalty for

possession of a certain amount of specified controlled substances; deleting certain exclusions to the definition of the term "cannabis"; creating a criminal penalty for possession of specified controlled substances; correcting a cross-reference; amending s. 893.135, F.S.; revising a dosage unit to include a gelatin capsule for the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance; amending s. 893.138, F.S.; authorizing a place or premises that has been used on two or more occasions for specified violations within a certain time period to be declared a public nuisance; amending s. 893.145, F.S.; revising the definition of the term "drug paraphernalia"; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity"; amending s. 921.0022, F.S.; adding an adult delivering controlled substances to a minor, using or hiring a minor to sell controlled substances, or using a minor to avoid detection or apprehension to level 3 of the offense severity ranking chart of the Criminal Punishment Code; making technical changes; reenacting ss. 39.01(30)(a) and (g), 316.193(5), 322.2616(2)(c), 327.35(5), 440.102(11)(b), 456.44(2), 458.326(3), 458.3265(1)(e), 459.0137(1)(e), 463.0055(4)(a), 465.0276(1)(b), 499.0121(14) and (15)(a), 499.029(3)(a), 782.04(1) and (4), 787.06(2)(a), 817.563(1), 831.31, 893.0301, 893.035(7)(a), 893.05(1), 893.055(1)(b), 893.07(5)(b), 893.12(2)(b),

(c), and (d), and 944.474(2), F.S., to incorporate the amendment made to s. 893.03, F.S., in references thereto; reenacting s. 893.149(4), F.S., to incorporate the amendment made to s. 893.033, F.S., in a reference thereto; reenacting ss. 397.451(4)(b), 435.07(2), 772.12(2), 775.084(1)(a), 810.02(3), 812.014(2), 831.311(1), 893.1351(1), 893.138(3), 893.15, 903.133, and 921.187(1)(l), F.S., to incorporate the amendment made to s. 893.13, F.S., in references thereto; reenacting ss. 893.12(2)(a) and 893.147(6)(a), F.S., to incorporate the amendment made to s. 893.145, F.S., in references thereto; reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g), and 905.34, F.S., to incorporate the amendment made to s. 895.02, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (2), (11), and (16) of section 893.02, Florida Statutes, are amended, new subsections (17) and (20) are added to that section, present subsections (17), (18), (19), (20), (21), (22), and (23) of that section are redesignated as subsections (18), (19), (21), (22), (23), (24), and (25), respectively, and subsections (4) and (14) are republished, to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(2) "Cannabinoid receptor agonist" means a chemical compound or substance that, according to scientific or medical research, study, testing, or analysis demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body ~~"Analog" or "chemical analog" means a structural derivative of a parent compound that is a controlled substance~~.

(4) "Controlled substance" means any substance named or described in Schedules I-V of s. 893.03. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws.

(11) "Homologue" means a chemical compound in a series in which each compound differs by one or more repeating hydrocarbon functional group units at any single point within the compound ~~alkyl functional groups on an alkyl side chain~~.

(14) "Listed chemical" means any precursor chemical or essential chemical named or described in s. 893.033.

(16) "Mixture" means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.

(17) "Nitrogen-heterocyclic analog" means an analog of a controlled substance which has a single carbon atom in a cyclic structure of a compound replaced by a nitrogen atom.

(20) "Positional isomer" means any substance that possesses the same molecular formula and core structure and that has the same functional group or substituent as those found in the respective controlled substance, attached at any positions on

the core structure, but in such manner that no new chemical functionalities are created and no existing chemical functionalities are destroyed relative to the respective controlled substance. Rearrangements of alkyl moieties within or between functional groups or substituents, or divisions or combinations of alkyl moieties, which do not create new chemical functionalities or destroy existing chemical functionalities, are allowed and include resulting compounds that are positional isomers. As used in this definition, the term "core structure" means the parent molecule that is the common basis for the class that includes, but is not limited to, tryptamine, phenethylamine, or ergoline. Examples of rearrangements resulting in creation or destruction of chemical functionalities, and therefore resulting in compounds that are not positional isomers, include, but are not limited to, ethoxy to alpha-hydroxyethyl, hydroxy and methyl to methoxy, or the repositioning of a phenolic or alcoholic hydroxy group to create a hydroxyamine. Examples of rearrangements resulting in compounds that would be positional isomers, include, but are not limited to, tert-butyl to sec-butyl, methoxy and ethyl to isopropoxy, N,N-diethyl to N-methyl-N-propyl, or alpha-methylamino to N-methylamino.

Section 2. Section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, ~~or~~ trade name, or class designated. The provisions of

this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.

2. Acetylmethadol.

3. Allylprodine.

4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

5. Alphamethadol.

6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

7. Alpha-methylthiofentanyl.

8. Alphameprodine.
9. Benzethidine.
10. Benzylfentanyl.
11. Betacetylmethadol.
12. Beta-hydroxyfentanyl.
13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-

Propionoxypiperidine) ~~(MPPP)~~.
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.
40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.
43. Norpipanone.
44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.
48. Phenoperidine.
49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine) ~~(PEPAP)~~.
50. Piritramide.
51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tilidine.
58. Trimeperidine.
59. Acetylfentanyl.
60. Butyrylfentanyl.
61. Beta-Hydroxythiofentanyl.
(b) Unless specifically excepted or unless listed in

another schedule, any of the following substances, their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Drotebanol.
10. Etorphine (except hydrochloride salt).
11. Heroin.
12. Hydromorphinol.
13. Methyldesorphine.
14. Methyldihydromorphine.
15. Monoacetylmorphine.
16. Morphine methylbromide.
17. Morphine methylsulfonate.
18. Morphine-N-Oxide.
19. Myrophine.
20. Nicocodine.
21. Nicomorphine.
22. Normorphine.
23. Pholcodine.
24. Thebacon.

(c) Unless specifically excepted or unless listed in

another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, homologues, nitrogen-heterocyclic analogs, esters, ethers, and salts of isomers, homologues, nitrogen-heterocyclic analogs, esters, or ethers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation or class description:

1. Alpha-Ethyltryptamine.
2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-oxazoline) ~~(4-methylaminorex)~~.
3. Aminorex (2-Amino-5-phenyl-2-oxazoline) ~~(Aminorex)~~.
4. DOB (4-Bromo-2,5-dimethoxyamphetamine).
5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
6. Bufotenine.
7. Cannabis.
8. Cathinone.
9. DET (Diethyltryptamine).
10. 2,5-Dimethoxyamphetamine.
11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine) ~~2,5-Dimethoxy-4-ethylamphetamine (DOET)~~.
12. DMT (Dimethyltryptamine).
13. PCE (N-Ethyl-1-phenylcyclohexylamine) ~~(PCE)~~(Ethylamine analog of phencyclidine).
14. JB-318 (N-Ethyl-3-piperidyl benzilate).
15. N-Ethylamphetamine.
16. Fenethylline.
17. 3,4-Methylenedioxy-N-hydroxyamphetamine ~~N-Hydroxy-3,4-~~

~~methylenedioxyamphetamine~~.

18. Ibogaine.

19. LSD (Lysergic acid diethylamide) ~~(LSD)~~.

20. Mescaline.

21. Methcathinone.

22. 5-Methoxy-3,4-methylenedioxyamphetamine.

23. PMA (4-Methoxyamphetamine).

24. PMMA (4-Methoxymethamphetamine).

25. DOM (4-Methyl-2,5-dimethoxyamphetamine).

26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).

27. MDA (3,4-Methylenedioxyamphetamine).

28. JB-336 (N-Methyl-3-piperidyl benzilate).

29. N,N-Dimethylamphetamine.

30. Parahexyl.

31. Peyote.

32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) ~~(PCPY)~~ (Pyrrolidine analog of phencyclidine).

33. Psilocybin.

34. Psilocyn.

35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers,

esters, ethers, and salts is possible within the specific chemical designation.

~~37. Tetrahydrocannabinols.~~

37. Xylazine.

38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) ~~(TCP)~~ (Thiophene analog of phencyclidine).

39. 3,4,5-Trimethoxyamphetamine.

40. Methylone (3,4-Methylenedioxymethcathinone).

41. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~.

42. Methylmethcathinone.

43. Methoxymethcathinone.

44. Fluoromethcathinone.

45. Methylethcathinone.

46. CP 47,497 (2-(~~[~~(1R,3S)~~-~~3-Hydroxycyclohexyl)~~]~~-5-(2-methyloctan-2-yl)phenol)~~, also known as CP 47,497~~ and its dimethyloctyl (C8) homologue.

47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol]~~,~~ ~~also known as HU-210~~.

48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole)~~, also known as JWH-018~~.

49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole)~~, also known as JWH-073~~.

50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)~~, also known as JWH-200~~.

51. BZP (Benzylpiperazine).

52. Fluorophenylpiperazine.

53. Methylphenylpiperazine.

54. Chlorophenylpiperazine.

55. Methoxyphenylpiperazine.
56. DBZP (1,4-Dibenzylpiperazine).
57. TFMPP (~~3~~-Trifluoromethylphenylpiperazine).
58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).
59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
60. 5-Hydroxy-N-methyltryptamine.
61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
63. Methyltryptamine.
64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
66. Tyramine (4-Hydroxyphenethylamine).
67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
68. DiPT (N,N-Diisopropyltryptamine).
69. DPT (N,N-Dipropyltryptamine).
70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine) ~~N,N-Diallyl-5-Methoxytryptamine~~.
72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-isopropylthiophenethylamine)~~.
76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-methylthiophenethylamine)~~.
78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-ethylthiophenethylamine)~~.

79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-(n)-propylthiophenethylamine)~~.
80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
81. Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone) ~~beta-keto-N-methylbenzodioxolylpropylamine)~~.
82. Ethcathinone.
83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
84. Naphyrone (Naphthylpyrovalerone).
85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone) ~~N-N-Dimethyl-3,4-methylenedioxycathinone~~.
86. 3,4-Methylenedioxy-N,N-diethylcathinone ~~N-N-Diethyl-3,4-methylenedioxycathinone~~.
87. 3,4-Methylenedioxy-propiophenone.
88. 3,4-Methylenedioxy-alpha-bromopropiophenone ~~2-Bromo-3,4-Methylenedioxypropiophenone~~.
89. 3,4-Methylenedioxy-propiophenone-2-oxime.
90. 3,4-Methylenedioxy-N-acetylcathinone ~~N-Acetyl-3,4-methylenedioxycathinone~~.
91. 3,4-Methylenedioxy-N-acetylmethcathinone ~~N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone~~.
92. 3,4-Methylenedioxy-N-acetylethcathinone ~~N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone~~.
93. Bromomethcathinone.
94. Buphedrone (alpha-Methylamino-butyrophenone).
95. Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone) ~~beta-Keto-Ethylbenzodioxolylbutanamine)~~.
96. Dimethylcathinone.

97. Dimethylmethcathinone.

98. Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone) ~~(beta-Keto-Methylbenzodioxolylpentanamine)~~.

99. MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone) ~~(MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone~~.

100. MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone) ~~(MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone~~.

101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone) ~~(MOPPP)~~.

102. MPHP (Methyl-alpha-pyrrolidinohexanophenone) ~~Methyl-alpha-pyrrolidinohexiophenone (MPHP)~~.

103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine) ~~Benocyclidine (BCP) or benzothiophenylcyclohexylpiperidine (BTCP)~~.

104. F-MABP (Fluoromethylaminobutyrophenone) ~~(F-MABP)~~.

105. MeO-PBP (Methoxypyrrolidinobutyrophenone) ~~(MeO-PBP)~~.

106. Et-PBP (Ethyl-pyrrolidinobutyrophenone) ~~(Et-PBP)~~.

107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone) ~~(3-Me-4-MeO-MCAT)~~.

108. Me-EABP (Methylethylaminobutyrophenone) ~~(Me-EABP)~~.

109. Etizolam ~~Methylamino-butyrophenone (MABP)~~.

110. PPP (Pyrrolidinopropiophenone) ~~(PPP)~~.

111. PBP (Pyrrolidinobutyrophenone) ~~Pyrrolidinobutiophenone (PBP)~~.

112. PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone) ~~(PVP)~~.

113. MPPP (Methyl-alpha-pyrrolidinopropiophenone) ~~(MPPP)~~.

114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole) ~~2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone)~~.

116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) ~~Naphthalen-1-yl-(1-hexylindol-3-yl)methanone)~~.

117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole) ~~Naphthalen-1-yl-(1-propyl-1H-indol-3-yl)methanone)~~.

119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole) ~~4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone)~~.

120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene) ~~((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran))~~.

122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole) ~~3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole)~~.

123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole) ~~2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone)~~.

125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole) ~~4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone)~~.

126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole) ~~2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone)~~.

127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole) ~~2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone)~~.

128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).

132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).

133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene) ~~Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone)~~.

134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).

135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).

136. CP 55,940 (2-[3-Hydroxy-5-propanol-cyclohexyl]-5-(2-methyloctan-2-yl)phenol) ~~2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol)~~.

137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole) ~~1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone)~~.

138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole) ~~1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone)~~.

139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole) ~~(4-methoxyphenyl)-(1-pentyl-1H-indol-3-yl)methanone)~~.

140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole) ~~1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone)~~.

141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

naphthalenylmethanone).

142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

143. Pentedrone (alpha-Methylaminovalerophenone) ~~2-(methylamino)-1-phenyl-1-pentanone)~~.

144. Fluoroamphetamine.

145. Fluoromethamphetamine.

146. Methoxetamine.

147. Methiopropamine.

148. ~~4-~~Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone) ~~2-Methylamino-1-(4-methylphenyl)butan-1-one)~~.

149. APB ((2-Aminopropyl)benzofuran).

150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).

151. UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)~~.

152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)~~.

153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone~~.

154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide) ~~1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indazole-3-carboxamide)~~.

155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole) ~~(2-iodophenyl)-[1-[(1-methyl-2-~~

piperidinyl)methyl]-1H-indol-3-yl]-methanone).

156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide) 1-(5-fluoropentyl)-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide).

157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-cyclohexylcarbamate).

158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one).

160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

161. 2C-H (2,5-Dimethoxyphenethylamine) 2-(2,5-Dimethoxyphenyl)ethanamine).

162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine) 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).

163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).

164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) 4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

165. MDMA (3,4-Methylenedioxymethamphetamine) (MDMA).

166. PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate) 1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid).

167. 5-Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate) 8-quinolinyl ester 1-(5-fluoropentyl)-1H-indole-3-carboxylic acid).

168. BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate) 1-(cyclohexylmethyl)-8-quinolinyl ester-1H-indole-

3-carboxylic acid).

169. 5-Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide) N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide).

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide).

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide).

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide).

173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).

174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) 4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

175. 25C-C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) 4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide): N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide.

177. FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate): Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate.

178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide)~~: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide~~.

179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide)~~: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate~~.

180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole)~~: (1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone~~.

181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol).

185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol).

186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

187. MAPB ((2-Methylaminopropyl)benzofuran).

188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

190. Synthetic Cannabinoids. Unless specifically excepted or unless listed in another schedule or contained within a

pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical class descriptions, or homologues, nitrogen-heterocyclic analogs, isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or the compounds of these structures shall be included under this subparagraph, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

a. Tetrahydrocannabinols. Any tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis*, the synthetic equivalents of the substances contained in the plant or in the resinous extracts of the genus *Cannabis*, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to, Delta 9 tetrahydrocannabinols and their optical isomers, Delta 8 tetrahydrocannabinols and their optical isomers, Delta 6a,10a tetrahydrocannabinols and their optical isomers, or any compound containing a tetrahydrobenzo[c]chromene

structure with substitution at either or both the 3-position or 9-position, with or without substitution at the 1-position with hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.

b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles. Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure,

with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

(II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-naphthoyl)indole).

(III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

(IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

(V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

(VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

(VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

(VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

(IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

(X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

(XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

(XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

(XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

(XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole).

(XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

(XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

(XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-naphthoyl)indole).

(XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

(XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

(XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

(XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

(XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-naphthylmethyl]indole).

(XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-naphthoyl)indole).

(XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-naphthoyl)indole).

(XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).

(XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).

(XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

(XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

(XXVIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).

(XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).

(XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole).

(XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-naphthoyl)indole).

(XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).

(XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-naphthoyl)indole).

(XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-naphthoyl)indole).

(XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).

(XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

(XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole).

(XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-naphthoyl)indole).

(XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

(XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-naphthoyl)carbazole).

c. Naphthoylpyrroles. Any compound containing a naphthoylpyrrole structure, with or without substitution on the pyrrole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

(II) JWH-031 (1-Hexyl—3-(1-naphthoyl)pyrrole).

(III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-naphthoyl)pyrrole).

(VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-naphthoyl)pyrrole).

(X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole).

d. Naphthylmethylenindenes. Any compound containing a naphthylmethylenindene structure, with or without substitution at the 3-position of the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to, JWH-176 (3-Pentyl-1-(naphthylmethylene)indene).

e. Phenylacetylindoles and Phenylacetylindazoles. Any compound containing a phenylacetylindole or phenylacetylindazole

structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

(II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

(III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

(IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

(V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

(VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

(VII) Cannabipiperidiethanone.

(VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

f. Cyclohexylphenols. Any compound containing a cyclohexylphenol structure, with or without substitution at the 5-position of the phenolic ring to any extent, whether or not substituted on the cyclohexyl ring to any extent, including, but not limited to:

(I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).

(II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).

(III) CP-55,940 (2-(3-Hydroxy-5-propanol-cyclohexyl)-5-(2-methyloctan-2-yl)phenol).

g. Benzoylindoles and Benzoylindazoles. Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

(II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

(III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodo-5-nitrobenzoyl)indole).

(IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).

(V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

(VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

(VII) RCS-4 C4 homologue (1-Butyl-3-(4-methoxybenzoyl)indole).

(VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-3-(4-methoxybenzoyl)indole).

h. Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles. Any compound containing a tetramethylcyclopropanoylindole or tetramethylcyclopropanoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the tetramethylcyclopropyl group to any extent, including, but not limited to:

(I) UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indazole).

(IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole carboxamides, and Adamantylindazole carboxamides. Any compound containing an adamantoyl indole, adamantoyl indazole, adamantyl indole carboxamide, or adamantyl indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent, including, but not limited to:

(I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

(II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

(III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

(IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-adamantoyl)indole).

(V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

(VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

(VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-adamantoyl)indole).

j. Quinolinylindolecarboxylates,

Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides, and Quinolinylindazolecarboxamides. Any compound containing a quinolinylindole carboxylate, quinolinylindazole carboxylate, isoquinolinylindole carboxylate, isoquinolinylindazole carboxylate, quinolinylindole carboxamide, quinolinylindazole carboxamide, isoquinolinylindole carboxamide, or isoquinolinylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the quinoline or isoquinoline ring to any extent, including, but not limited to:

(I) PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

(II) Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

(III) BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

(IV) FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) NPB-22 (8-Quinolinyl 1-pentylindazole-3-carboxylate).

(VI) Fluoro NPB-22 (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxylate).

(VII) FUB-NPB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indazole-3-carboxylate).

(VIII) THJ (8-Quinolinyl 1-pentylindazole-3-carboxamide).

(IX) Fluoro THJ (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxamide).

k. Naphthylindolecarboxylates and Naphthylindazolecarboxylates. Any compound containing a naphthylindole carboxylate or naphthylindazole carboxylate structure, with or without substitution on the indole or

indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-carboxylate).

(II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-carboxylate).

(III) Fluoro SDB-005 (1-Naphthalenyl 1-(fluoropentyl)indazole-3-carboxylate).

(IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-carboxylate).

l. Naphthylindole carboxamides and Naphthylindazole carboxamides. Any compound containing a naphthylindole carboxamide or naphthylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

(II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

(III) Chloro-NNEI (N-Naphthalen-1-yl 1-(chloropentyl) indole-3-carboxamide).

(IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-carboxamide).

(V) Fluoro MN-18 (N-Naphthalen-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl indazole carboxamides, Alkylcarbonyl indole carboxylates, and

Alkylcarbonyl indazole carboxylates. Any compound containing an alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an indole carboxamide, indazole carboxamide, indole carboxylate, or indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent, including, but not limited to:

(I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(XIV) Fluoro AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

(XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indole-3-carboxamide).

(XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide).

(XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

n. Cumylindolecarboxamides and Cumylindazolecarboxamides. Any compound containing a N-(2-phenylpropan-2-yl) indole carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide

structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring of the cumyl group to any extent, including, but not limited to:

(I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

o. Other Synthetic Cannabinoids. Any material, compound, mixture, or preparation that contains any quantity of a Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

(I) With or without modification or replacement of a carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage between either two core rings, or linkage between a core ring and group structure, with or without the addition of a carbon or replacement of a carbon;

(II) With or without replacement of a core ring or group structure, whether or not substituted on the ring or group structures to any extent; and

(III) Is a cannabinoid receptor agonist, unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

191. Substituted Cathinones. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts

is possible within any of the following specific chemical designations:

a. Any compound containing a 2-amino-1-phenyl-1 propanone structure;

b. Any compound containing a 2-amino-1-naphthyl-1-propanone structure; or

c. Any compound containing a 2-amino-1-thiophene-1-propanone structure,

whether or not the compound is further modified:

(I) With or without substitution on the ring system to any extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy, haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide substituents;

(II) With or without substitution at the 3-propanone position with an alkyl substituent or removal of the methyl group at the 3-propanone position;

(III) With or without substitution at the 2-amino nitrogen atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system; or

(IV) With or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

(A) Methcathinone.

(B) Ethcathinone.

(C) Methylone (3,4-Methylenedioxymethcathinone).

(D) 2,3-Methylenedioxymethcathinone.

(E) MDPV (3,4-Methylenedioxypyrovalerone).

(F) Methylmethcathinone.

(G) Methoxymethcathinone.

(H) Fluoromethcathinone.

(I) Methylethcathinone.

(J) Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).

(K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).

(L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).

(M) Naphyrone (Naphthylpyrovalerone).

(N) Bromomethcathinone.

(O) Buphedrone (alpha-Methylaminobutyrophenone).

(P) Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).

(Q) Dimethylcathinone.

(R) Dimethylmethcathinone.

(S) Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).

(T) Pentedrone (alpha-Methylaminovalerophenone).

(U) MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).

(V) MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).

(W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).

(X) PPP (Pyrrolidinopropiophenone).

(Y) PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

(Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

(AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).

(BB) F-MABP (Fluoromethylaminobutyrophenone).

(CC) Me-EABP (Methylethylaminobutyrophenone).

(DD) PBP (Pyrrolidinobutyrophenone).
(EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).
(FF) Et-PBP (Ethylpyrrolidinobutyrophenone).
(GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
(HH) Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
(II) 3,4-Methylenedioxy-N,N-diethylcathinone.
(JJ) 3,4-Methylenedioxy-N-acetylcathinone.
(KK) 3,4-Methylenedioxy-N-acetylmethcathinone.
(LL) 3,4-Methylenedioxy-N-acetylethcathinone.
(MM) Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).
(NN) Methyl-alpha-methylaminohexanophenone.
(OO) N-Ethyl-N-methylcathinone.
(PP) PHP (Pyrrolidinohexanophenone).
(QQ) PV8 (Pyrrolidinoheptanophenone).
(RR) Chloromethcathinone.
(SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.

192. Substituted Phenethylamines. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure, without a beta-keto group, and without a benzyl group attached to the amine group, whether or not the compound is further modified with or without substitution on the phenyl ring

to any extent with alkyl, alkylthio, nitro, alkoxy, thio, halide, fused alkylenedioxy, fused furan, fused benzofuran, fused dihydrofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha or beta position by any alkyl substituent, with or without substitution at the nitrogen atom, and with or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:
a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
j. 2C-H (2,5-Dimethoxyphenethylamine).
k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
m. MDMA (3,4-Methylenedioxymethamphetamine).
n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).
o. MDA (3,4-Methylenedioxyamphetamine).
p. 2,5-Dimethoxyamphetamine.
q. Fluoroamphetamine.
r. Fluoromethamphetamine.
s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
t. DOB (4-Bromo-2,5-dimethoxyamphetamine).

u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
y. PMA (4-Methoxyamphetamine).
z. N-Ethylamphetamine.
aa. N-Hydroxy-3,4-methylenedioxyamphetamine.
bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
cc. PMMA (4-Methoxymethamphetamine).
dd. N,N-Dimethylamphetamine.
ee. 3,4,5-Trimethoxyamphetamine.
ff. 4-APB (4-(2-Aminopropyl)benzofuran).
gg. 5-APB (5-(2-Aminopropyl)benzofuran).
hh. 6-APB (6-(2-Aminopropyl)benzofuran).
ii. 7-APB (7-(2-Aminopropyl)benzofuran).
jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).
ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-dihydrobenzofuran),

which does not include phenethylamine, mescaline as described in subparagraph (1)(c)20., substituted cathinones as described in

subparagraph (1)(c)191., N-Benzyl phenethylamine compounds as described in subparagraph (1)(c)193., or methamphetamine as described in subparagraph (2)(c)4.

193. N-Benzyl Phenethylamine Compounds. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including, but not limited to:

a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).
b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).
c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).
d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).
e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-

methoxybenzyl)]phenethylamine).

f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylanamine).

j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylanamine).

k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylanamine).

l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

q. 25H-NBOH (2,5-Dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

r. 25H-NBF (2,5-Dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine),

which does not include substituted cathinones as described in subparagraph (1)(c)191.

194. Substituted Tryptamines. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to:

a. Alpha-Ethyltryptamine.

b. Bufotenine.

c. DET (Diethyltryptamine).

d. DMT (Dimethyltryptamine).

e. MET (N-Methyl-N-ethyltryptamine).

f. DALT (N,N-Diallyltryptamine).

g. EiPT (N-Ethyl-N-isopropyltryptamine).

h. MiPT (N-Methyl-N-isopropyltryptamine).

i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).

j. 5-Hydroxy-N-methyltryptamine.

k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).

l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).

m. Methyltryptamine.

n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).

o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
q. DiPT (N,N-Diisopropyltryptamine).
r. DPT (N,N-Dipropyltryptamine).
s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-isopropyltryptamine).
z. Methyl-alpha-ethyltryptamine.
aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

which does not include tryptamine, psilocyn as described in subparagraph (1)(c)34., or psilocybin as described in subparagraph (1)(c)33.

195. Substituted Phenylcyclohexylamines. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a phenylcyclohexylamine structure, with or without any substitution on the phenyl ring, any substitution on the cyclohexyl ring, any replacement of the phenyl ring with a thiophenyl or benzothiophenyl ring, with or without substitution on the amine with alkyl, dialkyl, or alkoxy substitutients, inclusion of the nitrogen in a cyclic structure, or any combination of the above, including, but not limited to:

a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).
b. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).
c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine)(Pyrrolidine analog of phencyclidine).
d. PCPr (Phenylcyclohexylpropylamine).
e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)(Thiophene analog of phencyclidine).
f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).
g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).
h. Methoxetamine.
i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).
j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).
k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).
l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).
m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).
n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).
o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).
p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).
q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).
r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that ~~which~~ contains any quantity of the following substances, including any of its salts, isomers, optical isomers, salts of their isomers, and salts of these optical isomers whenever the existence of such isomers and salts is possible within the specific chemical designation:

1. 1,4-Butanediol.

2. Gamma-butyrolactone (GBL).

3. Gamma-hydroxybutyric acid (GHB).

4. Methaqualone.

5. Mecloqualone.

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmefene or isoquinoline alkaloids of opium, including, but not limited to the following:

a. Raw opium.

b. Opium extracts.

c. Opium fluid extracts.

d. Powdered opium.

e. Granulated opium.

f. Tincture of opium.

g. Codeine.

h. Ethylmorphine.

i. Etorphine hydrochloride.

j. Hydrocodone.

k. Hydromorphone.

l. Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

m. Metopon (methyldihydromorphinone).

n. Morphine.

o. Oxycodone.

p. Oxymorphone.

q. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances shall not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species *Papaver somniferum, L.*

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alfentanil.

2. Alphaprodine.

3. Anileridine.

4. Bezitramide.

5. Bulk propoxyphene (nondosage forms).

6. Carfentanil.
7. Dihydrocodeine.
8. Diphenoxylate.
9. Fentanyl.
10. Isomethadone.
11. Levomethorphan.
12. Levorphanol.
13. Metazocine.
14. Methadone.
15. Methadone-Intermediate,4-cyano-2-dimethylamino-4,4-diphenylbutane.
16. Moramide-Intermediate,2-methyl-3-morpholoino-1,1-diphenylpropane-carboxylic acid.
17. Nabilone.
18. Pethidine (meperidine).
19. Pethidine-Intermediate-A,4-cyano-1-methyl-4-phenylpiperidine.
20. Pethidine-Intermediate-B,ethyl-4-phenylpiperidine-4-carboxylate.
21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-4-carboxylic acid.
22. Phenazocine.
23. Phencyclidine.
24. 1-Phenylcyclohexylamine.
25. Piminodine.
26. 1-Piperidinocyclohexanecarbonitrile.
27. Racemethorphan.
28. Racemorphan.
29. Sufentanil.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, optical isomers, salts of their isomers, and salts of their optical isomers:
1. Amobarbital.
2. Amphetamine.
3. Glutethimide.
4. Methamphetamine.
5. Methylphenidate.
6. Pentobarbital.
7. Phenmetrazine.
8. Phenylacetone.
9. Secobarbital.

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, including thiobarbituric acid, or

any salt of a derivative of barbituric acid or thiobarbituric acid, including, but not limited to, butabarbital and butalbital.

2. Benzphetamine.

3. Chlorhexadol.

4. Chlorphentermine.

5. Clortermine.

6. Lysergic acid.

7. Lysergic acid amide.

8. Methyprylon.

9. Phendimetrazine.

10. Sulfondiethylmethane.

11. Sulfonethylmethane.

12. Sulfonmethane.

13. Tiletamine and zolazepam or any salt thereof.

(b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with

a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined pursuant to s. 893.135(6).

(d) Anabolic steroids.

1. The term “anabolic steroid” means any drug or hormonal

substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth and includes:

a. Androsterone.

b. Androsterone acetate.

c. Boldenone.

d. Boldenone acetate.

e. Boldenone benzoate.

f. Boldenone undecylenate.

g. Chlorotestosterone (Clostebol) ~~(4-chlortestosterone)~~.

~~h. Clostebol.~~

h.~~i.~~ Dehydrochlormethyltestosterone.

i.~~j.~~ Dihydrotestosterone (Stanolone) ~~(4-dihydrotestosterone)~~.

j.~~k.~~ Drostanolone.

k.~~l.~~ Ethylestrenol.

l.~~m.~~ Fluoxymesterone.

m.~~n.~~ Formebulone (Formebolone).

n.~~o.~~ Mesterolone.

o.~~p.~~ Methandrostenolone (Methandienone).

p.~~q.~~ Methandranone.

q.~~r.~~ Methandriol.

~~s. Methandrostenolone.~~

r.~~t.~~ Methenolone.

s.~~u.~~ Methyltestosterone.

t.~~v.~~ Mibolerone.

u.~~w.~~ Nortestosterone (Nandrolone).

v.~~x.~~ Norethandrolone.

~~y. Nortestosterone.~~

w.~~z.~~ Nortestosterone decanoate.

x.~~aa.~~ Nortestosterone phenylpropionate.

y.~~bb.~~ Nortestosterone propionate.

z.~~cc.~~ Oxandrolone.

aa.~~dd.~~ Oxymesterone.

bb.~~ee.~~ Oxymetholone.

~~ff. Stanolone.~~

cc.~~gg.~~ Stanozolol.

dd.~~hh.~~ Testolactone.

ee.~~ii.~~ Testosterone.

ff.~~jj.~~ Testosterone acetate.

gg.~~kk.~~ Testosterone benzoate.

hh.~~ll.~~ Testosterone cypionate.

ii.~~mm.~~ Testosterone decanoate.

jj.~~nn.~~ Testosterone enanthate.

kk.~~oo.~~ Testosterone isocaproate.

ll.~~pp.~~ Testosterone oleate.

mm.~~qq.~~ Testosterone phenylpropionate.

nn.~~rr.~~ Testosterone propionate.

oo.~~ss.~~ Testosterone undecanoate.

pp.~~tt.~~ Trenbolone.

qq.~~uu.~~ Trenbolone acetate.

rr.~~vv.~~ Any salt, ester, or isomer of a drug or substance described or listed in this subparagraph if that salt, ester, or isomer promotes muscle growth.

2. The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for such

administration. However, any person who prescribes, dispenses, or distributes such a steroid for human use is considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(e) Ketamine, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(f) Dronabinol (synthetic THC) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration.

(g) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under s. 505 of the Federal Food, Drug, and Cosmetic Act.

(4) SCHEDULE IV.—A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, are controlled in Schedule IV:

(a) Alprazolam.

(b) Barbital.

(c) Bromazepam.

(d) Camazepam.

(e) Cathine.

(f) Chloral betaine.

(g) Chloral hydrate.

(h) Chlordiazepoxide.

(i) Clobazam.

(j) Clonazepam.

(k) Clorazepate.

(l) Clotiazepam.

(m) Cloxazolam.

(n) Delorazepam.

(o) Propoxyphene (dosage forms).

(p) Diazepam.

(q) Diethylpropion.

(r) Estazolam.

(s) Ethchlorvynol.

(t) Ethinamate.

(u) Ethyl loflazepate.

(v) Fencamfamin.

(w) Fenfluramine.

(x) Fenproporex.

(y) Fludiazepam.

(z) Flurazepam.

(aa) Halazepam.

(bb) Haloxazolam.

(cc) Ketazolam.

(dd) Loprazolam.

(ee) Lorazepam.

(ff) Lormetazepam.
(gg) Mazindol.
(hh) Mebutamate.
(ii) Medazepam.
(jj) Mefenorex.
(kk) Meprobamate.
(ll) Methohexital.
(mm) Methylphenobarbital.
(nn) Midazolam.
(oo) Nimetazepam.
(pp) Nitrazepam.
(qq) Nordiazepam.
(rr) Oxazepam.
(ss) Oxazolam.
(tt) Paraldehyde.
(uu) Pemoline.
(vv) Pentazocine.
(ww) Phenobarbital.
(xx) Phentermine.
(yy) Pinazepam.
(zz) Pipradrol.
(aaa) Prazepam.
(bbb) Propylhexedrine, excluding any patent or proprietary preparation containing propylhexedrine, unless otherwise provided by federal law.
(ccc) Quazepam.
(ddd) Tetrazepam.
(eee) SPA[(-)-1 dimethylamino-1, 2 diphenylethane].

(fff) Temazepam.
(ggg) Triazolam.
(hhh) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
(iii) Butorphanol tartrate.
(jjj) Carisoprodol.
(5) SCHEDULE V.—A substance, compound, mixture, or preparation of a substance in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.
(a) Substances controlled in Schedule V include any compound, mixture, or preparation containing any of the following limited quantities of controlled substances, which shall include one or more active medicinal ingredients which are not controlled substances in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the controlled substance alone:
1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
3. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts: Buprenorphine.

(c) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Section 3. Section 893.033, Florida Statutes, is amended to read:

893.033 Listed chemicals.—The chemicals listed in this section are included by whatever official, common, usual, chemical, or trade name designated.

(1) PRECURSOR CHEMICALS.—The term "listed precursor chemical" means a chemical that may be used in manufacturing a controlled substance in violation of this chapter and is critical to the creation of the controlled substance, and such term includes any salt, optical isomer, or salt of an optical isomer, whenever the existence of such salt, optical isomer, or salt of optical isomer is possible within the specific chemical designation. The following are "listed precursor chemicals":

(a) Anthranilic acid.

(b) Benzaldehyde.

(c) Benzyl cyanide.

(d) Chloroephedrine.

(e) Chloropseudoephedrine.

(f) Ephedrine.

(g) Ergonovine.

(h) Ergotamine.

(i) Ergocristine.

~~(i) Hydriodic acid.~~

(j) Ethylamine.

(k) Iodine tincture above 2.2 percent.

(l) ~~(k)~~ Isosafrole.

(m) ~~(l)~~ Methylamine.

(n) ~~(m)~~ 3, 4-Methylenedioxyphenyl-2-propanone.

(o) ~~(n)~~ N-Acetylanthranilic acid.

(p) ~~(o)~~ N-Ethylephedrine.

(q) ~~(p)~~ N-Ethylpseudoephedrine.

(r) ~~(q)~~ N-Methylephedrine.

(s) ~~(r)~~ N-Methylpseudoephedrine.

(t) ANPP (4-Anilino-N-phenethyl-4-piperidine).

(u) NPP (N-Phenethyl-4-piperidone).

(v) ~~(s)~~ Nitroethane.

(w) ~~(t)~~ Norpseudoephedrine.

(x) ~~(u)~~ Phenylacetic acid.

(y) ~~(v)~~ Phenylpropanolamine.

(z) ~~(w)~~ Piperidine.

(aa) ~~(x)~~ Piperonal.

(bb) ~~(y)~~ Propionic anhydride.

(cc) ~~(z)~~ Pseudoephedrine.

(dd) ~~(aa)~~ Safrole.

(2) ESSENTIAL CHEMICALS.—The term "listed essential chemical" means a chemical that may be used as a solvent,

reagent, or catalyst in manufacturing a controlled substance in violation of this chapter. The following are "listed essential chemicals":

(a) Acetic anhydride.

(b) Acetone.

(c) Ammonium salts, including, but not limited to, nitrate, sulfate, phosphate, or chloride.

(d) ~~(c)~~ Anhydrous ammonia.

(e) Benzoquinone.

(f) ~~(d)~~ Benzyl chloride.

(g) ~~(e)~~ 2-Butanone.

(h) ~~(f)~~ Ethyl ether.

(i) Formic acid.

(j) ~~(g)~~ Hydrochloric acid ~~gas~~.

(k) ~~(h)~~ Hydriodic acid.

(l) ~~(i)~~ Iodine.

(m) Lithium.

(n) Organic solvents, including, but not limited to, Coleman Fuel, camping fuel, ether, toluene, or lighter fluid.

(o) Organic cosolvents, including, but not limited to, glycerol, propylene glycol, or polyethylene glycol.

(p) Potassium dichromate.

(q) ~~(j)~~ Potassium permanganate.

(r) Sodium.

(s) Sodium dichromate.

(t) Sodium borohydride.

(u) Sodium cyanoborohydride.

(v) Sodium hydroxide.

(w) Sulfuric acid.

~~(k) Toluene.~~

Section 4. Subsections (3) and (5) of section 893.0356, Florida Statutes, are amended, paragraph (j) is added to subsection (4) of that section, and paragraph (a) of subsection (2) of that section is republished, to read:

893.0356 Control of new substances; findings of fact; "controlled substance analog" defined.—

(2)(a) As used in this section, "controlled substance analog" means a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

1. Is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03; and

2. Has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03.

(3) As used in this section, the term "substantially similar," as the term applies to the chemical structure of a substance, means that the chemical structure of the substance compared to the structure of a controlled substance has a single difference in the structural formula that substitutes one atom or functional group for another, including, but not limited to, one halogen for another halogen, one hydrogen for a halogen or vice versa, an alkyl group added or deleted as a side chain to or from a molecule, or an alkyl group added or deleted from a side chain of a molecule. ~~"potential for abuse" in this section means that a substance has properties as a central nervous~~

~~system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being:~~

~~(a) Used in amounts that create a hazard to the user's health or the safety of the community;~~

~~(b) Diverted from legal channels and distributed through illegal channels; or~~

~~(c) Taken on the user's own initiative rather than on the basis of professional medical advice.~~

~~Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.~~

(4) The following factors shall be relevant to a finding that a substance is a controlled substance analog within the purview of this section:

(j) Comparisons to the accepted methods of marketing, distribution, and sales of the substance and that which the substance is purported to be, including, but not limited to:

1. The difference in price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;

2. The difference in how the substance is imported, manufactured, or distributed compared to how the substance it is purported to be or advertised as is normally imported, manufactured, or distributed;

3. The difference in the appearance of the substance in

overall finished dosage form compared to the substance it is purported to be or advertised as normally appears in overall finished dosage form; and

4. The difference in how the substance is labeled for sale, packaged for sale, or the method of sale, including, but not limited to, the placement of the substance in an area commonly viewable to the public for purchase consideration compared to how the substance it is purported to be or advertised as is normally labeled for sale, packaged for sale, or sold to the public.

(5) A controlled substance analog shall, for purposes of drug abuse prevention and control, be treated as the highest scheduled ~~a~~ controlled substance of which it is a controlled substance analog to in ~~Schedule I of~~ s. 893.03.

Section 5. Subsections (1), (4), and (6), and paragraph (d) of subsection (8) of section 893.13, Florida Statutes, are amended, and subsection (2), paragraphs (a) and (b) of subsection (5), and paragraph (a) of subsection (7) of that section are republished, to read:

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s.

893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. As used in this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s.

893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational


460300

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institution. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,


460300

576-03397-16

(2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(g) Except as authorized by this chapter, a person may not manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If a person violates this paragraph and:

1. The commission or attempted commission of the crime occurs in a structure or conveyance where any child younger than 16 years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child younger than 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

(2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(2)(a) Except as authorized by this chapter and chapter 499, a person may not purchase, or possess with intent to purchase, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not purchase more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Except as authorized by this chapter, a person 18 years of age or older may not deliver any controlled substance to a person younger than 18 years of age, use or hire a person younger than 18 years of age as an agent or employee in the sale or delivery of such a substance, or use such person to assist in avoiding detection or apprehension for a violation of this chapter. A person who violates this paragraph ~~provision~~ with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any other controlled substance, except as lawfully sold, manufactured, or delivered, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, and the person so convicted may not be placed on probation.

(5) A person may not bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. A person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6)(a) A person may not be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. A person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of 20 grams or less of cannabis, as defined in this chapter, ~~or 3 grams or less of a controlled substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173.,~~ the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. As used in this subsection, the term "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin~~, and a controlled substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173. does not include the substance in a powdered~~

~~form~~.

(c) Except as provided in this chapter, a person may not possess more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the offense is possession of a controlled substance named or described in s. 893.03(5), the person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) ~~(d)~~ Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

(7)(a) A person may not:

1. Distribute or dispense a controlled substance in violation of this chapter.

2. Refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. Refuse entry into any premises for any inspection or refuse to allow any inspection authorized by this chapter.

4. Distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. Keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place

which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

6. Use to his or her own personal advantage, or reveal, any information obtained in enforcement of this chapter except in a prosecution or administrative hearing for a violation of this chapter.

7. Possess a prescription form unless it has been signed by the practitioner whose name appears printed thereon and completed. This subparagraph does not apply if the person in possession of the form is the practitioner whose name appears printed thereon, an agent or employee of that practitioner, a pharmacist, or a supplier of prescription forms who is authorized by that practitioner to possess those forms.

8. Withhold information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person making the request has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the previous 30 days.

9. Acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. Affix any false or forged label to a package or receptacle containing a controlled substance.

11. Furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record

required to be kept by this chapter.

12. Store anhydrous ammonia in a container that is not approved by the United States Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

13. With the intent to obtain a controlled substance or combination of controlled substances that are not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtain or attempt to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subparagraph, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner or as described in subparagraph 8.

(8)

(d) Notwithstanding paragraph (c), if a prescribing practitioner has violated paragraph (a) and received $1,000 or more in payment for writing one or more prescriptions or, in the case of a prescription written for a controlled substance described in s. 893.135, has written one or more prescriptions for a quantity of a controlled substance which, individually or in the aggregate, meets the threshold for the offense of trafficking in a controlled substance under s. 893.135 ~~s. 893.15~~, the violation is reclassified as a felony of the second degree and ranked in level 4 of the Criminal Punishment Code.

Section 6. Paragraphs (g) and (l) of subsection (1) of

section 893.135, Florida Statutes, are republished, paragraph (k) of that subsection is amended, and subsection (6) of that section is amended, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of

flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in s. 893.03(1)(c):

a. (MDMA) 3,4-Methylenedioxymethamphetamine ~~(MDMA)~~;

b. DOB (4-Bromo-2,5-dimethoxyamphetamine);

c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);

d. 2,5-Dimethoxyamphetamine;

e. DOET (4-Ethyl-2,5-dimethoxyamphetamine) ~~2,5-Dimethoxy-4-ethylamphetamine (DOET)~~;

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. PMA (4-methoxyamphetamine);

j. PMMA (4-methoxymethamphetamine);

k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);

m. MDA (3,4-Methylenedioxyamphetamine);

n. N,N-dimethylamphetamine;

o. 3,4,5-Trimethoxyamphetamine;

p. Methylone (3,4-Methylenedioxymethcathinone);

q. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~; or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., commits a felony of the first degree, which felony shall be known as "trafficking in Phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of

imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $250,000.

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of any of the following substances described in s. 893.03(1)(c):

a. MDMA (3,4-Methylenedioxymethamphetamine) ~~(MDMA)~~;

b. 2C-B (4-Bromo-2,5-dimethoxyamphetamine);

c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);

d. 2,5-Dimethoxyamphetamine;

e. DOET (4-Ethyl-2,5-dimethoxyamphetamine) ~~2,5-Dimethoxy-4-ethylamphetamine (DOET)~~;

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. PMA (4-methoxyamphetamine);

j. PMMA (4-methoxymethamphetamine);

k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);

m. MDA (3,4-Methylenedioxyamphetamine);

n. N,N-dimethylamphetamine;

o. 3,4,5-Trimethoxyamphetamine;

p. Methylone (3,4-Methylenedioxymethcathinone);

q. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~; or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any

combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(l)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into

this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(6) A mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a gelatin capsule, pill, or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

Section 7. Subsection (2) of section 893.138, Florida Statutes, is amended to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as

the site of a violation of s. 796.07;

(b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(d) By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03; ~~or~~

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property; or

(f) On two or more occasions within a 6-month period, as the site of a violation of chapter 499,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 8. Subsections (6) and (12) of section 893.145, Florida Statutes, are amended to read:

893.145 "Drug paraphernalia" defined.—The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a

controlled substance in violation of this chapter or s. 877.111. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to:

(6) Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in diluting ~~cutting~~ controlled substances; or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances, as described in s. 893.03, or substances described in s. 877.111(1) ~~cannabis, cocaine, hashish, hashish oil, or nitrous oxide~~ into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(b) Water pipes.

(c) Carburetion tubes and devices.

(d) Smoking and carburetion masks.

(e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

(f) Miniature cocaine spoons, and cocaine vials.

(g) Chamber pipes.

(h) Carburetor pipes.

(i) Electric pipes.

(j) Air-driven pipes.

(k) Chillums.

(l) Bongs.

(m) Ice pipes or chillers.

(n) A cartridge or canister, which means a small metal device used to contain nitrous oxide.

(o) A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.

(p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.

(q) A whip-it, which means a device that may be used to expel nitrous oxide.

(r) A tank.

(s) A balloon.

(t) A hose or tube.

(u) A 2-liter-type soda bottle.

(v) Duct tape.

Section 9. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of

cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband, ~~and~~ adulterated, or misbranded drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 10. Paragraphs (c), (e), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended, and paragraphs (b), (d), and (h) of that subsection are republished, to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.

403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to

		public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.

826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing

		item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.

379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.

624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other

		than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.

817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.

838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet

			of university.
2562			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
2563			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
2564			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
2565			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
2566			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery,

			misrepresentation, etc.
2567			
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
2568			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
2569			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
2570			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
2571			
	893.13(8)(a)3.	3rd	Knowingly write a

		prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
499.0051(2)	3rd	Failure to authenticate pedigree papers.
499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.

2587	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
2588	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
2589	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
2590	784.075	3rd	Battery on detention or commitment facility staff.
2591	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
2592	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
2593	784.081(3)	3rd	Battery on specified official or employee.

2594	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
2595	784.083(3)	3rd	Battery on code inspector.
2596	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
2597	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
2598	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or

		delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted

		burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding

		s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state

		agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to

		join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.3671	3rd	Willful molestation,

	(2)(c)3.		possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
2641			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
2642			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
2643			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
2644			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2645			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or

			authority; premium collected $20,000 or more but less than $100,000.
2646			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
2647			
	790.01(2)	3rd	Carrying a concealed firearm.
2648			
	790.162	2nd	Threat to throw or discharge destructive device.
2649			
	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
2650			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
2651			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
2652			

796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.

812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment

			avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
2665			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
2666			
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
2667			
	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
2668			
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc.,

			which includes sexual conduct by a child.
2669			
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
2670			
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
2671			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
2672			
	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
2673			
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
2674			

874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or

		municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a),

			(1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
2681			
	893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance ~~cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs)~~.
2682			
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
2683			
2684			
2685	(g) LEVEL 7		
2686			
	Florida Statute	Felony Degree	Description
2687			
	316.027(2)(c)	1st	Accident involving death,

			failure to stop; leaving scene.
2688			
	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
2689			
	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2690			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
2691			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
2692			
	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.

409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.

462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.

484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement,

		or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or

		court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and

		services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling,

		using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.

800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.

810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims

		with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly

			person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
2769			
	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
2770			
	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
2771			
	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
2772			
	838.015	2nd	Bribery.
2773			
	838.016	2nd	Unlawful compensation or reward for official behavior.
2774			
	838.021(3)(a)	2nd	Unlawful harm to a public servant.
2775			

	838.22	2nd	Bid tampering.
2776			
	843.0855(2)	3rd	Impersonation of a public officer or employee.
2777			
	843.0855(3)	3rd	Unlawful simulation of legal process.
2778			
	843.0855(4)	3rd	Intimidation of a public officer or employee.
2779			
	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
2780			
	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
2781			
	872.06	2nd	Abuse of a dead human body.
2782			
	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2783			
	874.10	1st,PBL	Knowingly initiates,

			organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
2784			
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
2785			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

2786			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance ~~cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs)~~.
2787			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
2788			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
2789			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
2790			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
2791			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2792			

893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less

		than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.

943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure

		to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of

		prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without

			design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
2830			
	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
2831			
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
2832			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
2833			
	787.06(3)(a)1.	1st	Human trafficking for

			labor and services of a child.
2834			
	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
2835			
	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
2836			
	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
2837			
	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
2838			
	790.161(3)	1st	Discharging a destructive

			device which results in bodily harm or property damage.
2839			
	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
2840			
	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
2841			
	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
2842			
	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use

			physical force likely to cause serious injury; prior conviction for specified sex offense.
2843			
	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
2844			
	800.04(4)(b)	2nd	Lewd or lascivious battery.
2845			
	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
2846			
	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
2847			
	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
2848			

810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner

		is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.

825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.

	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
2873			
	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
2874			
	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
2875			
	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
2876			
	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
2877			
	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.

2878			
	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
2879			
	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
2880			
	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2881			
	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2882			
	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2883			
	895.03(3)	1st	Conduct or participate in

			any enterprise through pattern of racketeering activity.
2884			
	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
2885			
	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

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2888
2889 Section 11. For the purpose of incorporating the amendment
2890 made by this act to section 893.03, Florida Statutes, in
2891 references thereto, paragraphs (a) and (g) of subsection (30) of
2892 section 39.01, Florida Statutes, are reenacted to read:
2893 39.01 Definitions.—When used in this chapter, unless the
2894 context otherwise requires:
2895 (30) "Harm" to a child's health or welfare can occur when
2896 any person:
2897 (a) Inflicts or allows to be inflicted upon the child

2898 physical, mental, or emotional injury. In determining whether
2899 harm has occurred, the following factors must be considered in
2900 evaluating any physical, mental, or emotional injury to a child:
2901 the age of the child; any prior history of injuries to the
2902 child; the location of the injury on the body of the child; the
2903 multiplicity of the injury; and the type of trauma inflicted.
2904 Such injury includes, but is not limited to:
2905 1. Willful acts that produce the following specific
2906 injuries:
2907 a. Sprains, dislocations, or cartilage damage.
2908 b. Bone or skull fractures.
2909 c. Brain or spinal cord damage.
2910 d. Intracranial hemorrhage or injury to other internal
2911 organs.
2912 e. Asphyxiation, suffocation, or drowning.
2913 f. Injury resulting from the use of a deadly weapon.
2914 g. Burns or scalding.
2915 h. Cuts, lacerations, punctures, or bites.
2916 i. Permanent or temporary disfigurement.
2917 j. Permanent or temporary loss or impairment of a body part
2918 or function.
2919
2920 As used in this subparagraph, the term "willful" refers to the
2921 intent to perform an action, not to the intent to achieve a
2922 result or to cause an injury.
2923 2. Purposely giving a child poison, alcohol, drugs, or
2924 other substances that substantially affect the child's behavior,
2925 motor coordination, or judgment or that result in sickness or
2926 internal injury. For the purposes of this subparagraph, the term

"drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part

or function.

k. Significant bruises or welts.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or

2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

Section 12. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (5) of section 316.193, Florida Statutes, is reenacted to read:

316.193 Driving under the influence; penalties.—

(5) The court shall place all offenders convicted of violating this section on monthly reporting probation and shall require completion of a substance abuse course conducted by a DUI program licensed by the department under s. 322.292, which must include a psychosocial evaluation of the offender. If the DUI program refers the offender to an authorized substance abuse treatment provider for substance abuse treatment, in addition to

any sentence or fine imposed under this section, completion of all such education, evaluation, and treatment is a condition of reporting probation. The offender shall assume reasonable costs for such education, evaluation, and treatment. The referral to treatment resulting from a psychosocial evaluation shall not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court, which shall have access to the DUI program's psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the full cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of s. 893.03. If an offender referred to treatment under this subsection fails to report for or complete such treatment or fails to complete the DUI program substance abuse education course and evaluation, the DUI program shall notify the court and the department of the failure. Upon receipt of the notice, the department shall cancel the offender's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may temporarily reinstate the driving privilege on a restricted basis upon verification from the DUI program that the offender is currently participating in treatment and the DUI education course and evaluation requirement has been completed. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of treatment

from the DUI program. The organization that conducts the substance abuse education and evaluation may not provide required substance abuse treatment unless a waiver has been granted to that organization by the department. A waiver may be granted only if the department determines, in accordance with its rules, that the service provider that conducts the substance abuse education and evaluation is the most appropriate service provider and is licensed under chapter 397 or is exempt from such licensure. A statistical referral report shall be submitted quarterly to the department by each organization authorized to provide services under this section.

Section 13. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 322.2616, Florida Statutes, is reenacted to read:

322.2616 Suspension of license; persons under 21 years of age; right to review.—

(2)

(c) When a driver subject to this section has a blood-alcohol or breath-alcohol level of 0.05 or higher, the suspension shall remain in effect until such time as the driver has completed a substance abuse course offered by a DUI program licensed by the department. The driver shall assume the reasonable costs for the substance abuse course. As part of the substance abuse course, the program shall conduct a substance abuse evaluation of the driver, and notify the parents or legal guardians of drivers under the age of 19 years of the results of the evaluation. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I

through V of s. 893.03. If a driver fails to complete the substance abuse education course and evaluation, the driver license shall not be reinstated by the department.

Section 14. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (5) of section 327.35, Florida Statutes, is reenacted to read:

327.35 Boating under the influence; penalties; "designated drivers."—

(5) In addition to any sentence or fine, the court shall place any offender convicted of violating this section on monthly reporting probation and shall require attendance at a substance abuse course specified by the court; and the agency conducting the course may refer the offender to an authorized service provider for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. The offender shall assume reasonable costs for such education, evaluation, and treatment, with completion of all such education, evaluation, and treatment being a condition of reporting probation. Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation conducted by an agency appointed by the court and with access to the original evaluation. The offender shall bear the cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I-V of s. 893.03.

Section 15. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (11) of section

440.102, Florida Statutes, is reenacted to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK POSITIONS.—

(b) An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. 893.03. A special-risk employee who is participating in an employee assistance program or drug rehabilitation program may not be allowed to continue to work in any special-risk or mandatory-testing position of the public employer, but may be assigned to a position other than a mandatory-testing position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

Section 16. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (2) of section 456.44, Florida Statutes, is reenacted to read:

456.44 Controlled substance prescribing.—

(2) REGISTRATION.—Effective January 1, 2012, a physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466 who prescribes any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:

(a) Designate himself or herself as a controlled substance prescribing practitioner on the physician's practitioner profile.

(b) Comply with the requirements of this section and applicable board rules.

Section 17. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (3) of section 458.326, Florida Statutes, is reenacted to read:

458.326 Intractable pain; authorized treatment.—

(3) Notwithstanding any other provision of law, a physician may prescribe or administer any controlled substance under Schedules II-V, as provided for in s. 893.03, to a person for the treatment of intractable pain, provided the physician does so in accordance with that level of care, skill, and treatment recognized by a reasonably prudent physician under similar conditions and circumstances.

Section 18. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 458.3265, Florida Statutes, is reenacted to read:

458.3265 Pain-management clinics.—

(1) REGISTRATION.—

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.

2. Whose application for a license to prescribe, dispense,

or administer a controlled substance has been denied by any jurisdiction.

3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

Section 19. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 459.0137, Florida Statutes, is reenacted to read:

459.0137 Pain-management clinics.—

(1) REGISTRATION.—

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.

2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction.

3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

Section 20. For the purpose of incorporating the amendment

made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 463.0055, Florida Statutes, is reenacted to read:

463.0055 Administration and prescription of ocular pharmaceutical agents.—

(4) A certified optometrist shall be issued a prescriber number by the board. Any prescription written by a certified optometrist for an ocular pharmaceutical agent pursuant to this section shall have the prescriber number printed thereon. A certified optometrist may not administer or prescribe:

(a) A controlled substance listed in Schedule III, Schedule IV, or Schedule V of s. 893.03, except for an oral analgesic placed on the formulary pursuant to this section for the relief of pain due to ocular conditions of the eye and its appendages.

Section 21. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 465.0276, Florida Statutes, is reenacted to read:

465.0276 Dispensing practitioner.—

(1)

(b) A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III as provided in s. 893.03. This paragraph does not apply to:

1. The dispensing of complimentary packages of medicinal drugs which are labeled as a drug sample or complimentary drug as defined in s. 499.028 to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect,

as provided in subsection (5).

2. The dispensing of controlled substances in the health care system of the Department of Corrections.

3. The dispensing of a controlled substance listed in Schedule II or Schedule III in connection with the performance of a surgical procedure. The amount dispensed pursuant to the subparagraph may not exceed a 14-day supply. This exception does not allow for the dispensing of a controlled substance listed in Schedule II or Schedule III more than 14 days after the performance of the surgical procedure. For purposes of this subparagraph, the term "surgical procedure" means any procedure in any setting which involves, or reasonably should involve:

a. Perioperative medication and sedation that allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal or tactile stimulation and makes intra- and postoperative monitoring necessary; or

b. The use of general anesthesia or major conduction anesthesia and preoperative sedation.

4. The dispensing of a controlled substance listed in Schedule II or Schedule III pursuant to an approved clinical trial. For purposes of this subparagraph, the term "approved clinical trial" means a clinical research study or clinical investigation that, in whole or in part, is state or federally funded or is conducted under an investigational new drug application that is reviewed by the United States Food and Drug Administration.

5. The dispensing of methadone in a facility licensed under s. 397.427 where medication-assisted treatment for opiate

addiction is provided.

6. The dispensing of a controlled substance listed in Schedule II or Schedule III to a patient of a facility licensed under part IV of chapter 400.

Section 22. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, subsection (14) and paragraph (a) of subsection (15) of section 499.0121, Florida Statutes, are reenacted to read:

499.0121 Storage and handling of prescription drugs; recordkeeping.—The department shall adopt rules to implement this section as necessary to protect the public health, safety, and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

(14) DISTRIBUTION REPORTING.—Each prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, retail pharmacy drug wholesale distributor, manufacturer, or repackager that engages in the wholesale distribution of controlled substances as defined in s. 893.02 shall submit a report to the department of its receipts and distributions of controlled substances listed in Schedule II, Schedule III, Schedule IV, or Schedule V as provided in s. 893.03. Wholesale distributor facilities located within this state shall report all transactions involving controlled substances, and wholesale distributor facilities located outside this state shall report all distributions to entities located in this state. If the prescription drug wholesale distributor, out-

of-state prescription drug wholesale distributor, retail pharmacy drug wholesale distributor, manufacturer, or repackager does not have any controlled substance distributions for the month, a report shall be sent indicating that no distributions occurred in the period. The report shall be submitted monthly by the 20th of the next month, in the electronic format used for controlled substance reporting to the Automation of Reports and Consolidated Orders System division of the federal Drug Enforcement Administration. Submission of electronic data must be made in a secured Internet environment that allows for manual or automated transmission. Upon successful transmission, an acknowledgment page must be displayed to confirm receipt. The report must contain the following information:

(a) The federal Drug Enforcement Administration registration number of the wholesale distributing location.

(b) The federal Drug Enforcement Administration registration number of the entity to which the drugs are distributed or from which the drugs are received.

(c) The transaction code that indicates the type of transaction.

(d) The National Drug Code identifier of the product and the quantity distributed or received.

(e) The Drug Enforcement Administration Form 222 number or Controlled Substance Ordering System Identifier on all Schedule II transactions.

(f) The date of the transaction.

The department must share the reported data with the Department of Law Enforcement and local law enforcement agencies upon

request and must monitor purchasing to identify purchasing levels that are inconsistent with the purchasing entity's clinical needs. The Department of Law Enforcement shall investigate purchases at levels that are inconsistent with the purchasing entity's clinical needs to determine whether violations of chapter 893 have occurred.

(15) DUE DILIGENCE OF PURCHASERS.—

(a) Each prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, and retail pharmacy drug wholesale distributor must establish and maintain policies and procedures to credential physicians licensed under chapter 458, chapter 459, chapter 461, or chapter 466 and pharmacies that purchase or otherwise receive from the wholesale distributor controlled substances listed in Schedule II or Schedule III as provided in s. 893.03. The prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, or retail pharmacy drug wholesale distributor shall maintain records of such credentialing and make the records available to the department upon request. Such credentialing must, at a minimum, include:

1. A determination of the clinical nature of the receiving entity, including any specialty practice area.

2. A review of the receiving entity's history of Schedule II and Schedule III controlled substance purchasing from the wholesale distributor.

3. A determination that the receiving entity's Schedule II and Schedule III controlled substance purchasing history, if any, is consistent with and reasonable for that entity's clinical business needs.

Section 23. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 499.029, Florida Statutes, is reenacted to read:

499.029 Cancer Drug Donation Program.—

(3) As used in this section:

(a) "Cancer drug" means a prescription drug that has been approved under s. 505 of the federal Food, Drug, and Cosmetic Act and is used to treat cancer or its side effects or is used to treat the side effects of a prescription drug used to treat cancer or its side effects. "Cancer drug" does not include a substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03.

Section 24. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, subsections (1) and (4) of section 782.04, Florida Statutes, are reenacted to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

a. Trafficking offense prohibited by s. 893.135(1),

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

i. Aggravated abuse of an elderly person or disabled adult,

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

p. Resisting an officer with violence to his or her person,

q. Aggravated fleeing or eluding with serious bodily injury or death,

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism; or

3. Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the

perpetration of, or in the attempt to perpetrate, any felony other than any:

(a) Trafficking offense prohibited by s. 893.135(1),

(b) Arson,

(c) Sexual battery,

(d) Robbery,

(e) Burglary,

(f) Kidnapping,

(g) Escape,

(h) Aggravated child abuse,

(i) Aggravated abuse of an elderly person or disabled adult,

(j) Aircraft piracy,

(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,

(l) Unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

(m) Carjacking,

(n) Home-invasion robbery,

(o) Aggravated stalking,

(p) Murder of another human being,

(q) Aggravated fleeing or eluding with serious bodily injury or death,

(r) Resisting an officer with violence to his or her person, or

(s) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 25. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 787.06, Florida Statutes, is reenacted to read:

787.06 Human trafficking.—

(2) As used in this section, the term:

(a) "Coercion" means:

1. Using or threatening to use physical force against any person;

2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;

3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;

5. Causing or threatening to cause financial harm to any

person;

6. Enticing or luring any person by fraud or deceit; or

7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.

Section 26. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (1) of section 817.563, Florida Statutes, is reenacted to read:

817.563 Controlled substance named or described in s. 893.03; sale of substance in lieu thereof.—It is unlawful for any person to agree, consent, or in any manner offer to unlawfully sell to any person a controlled substance named or described in s. 893.03 and then sell to such person any other substance in lieu of such controlled substance. Any person who violates this section with respect to:

(1) A controlled substance named or described in s. 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 27. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, section 831.31, Florida Statutes, is reenacted to read:

831.31 Counterfeit controlled substance; sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver.—

(1) It is unlawful for any person to sell, manufacture, or deliver, or to possess with intent to sell, manufacture, or

deliver, a counterfeit controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance named or described in s. 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(5) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For purposes of this section, "counterfeit controlled substance" means:

(a) A controlled substance named or described in s. 893.03 which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or number, or any likeness thereof, of a manufacturer other than the person who in fact manufactured the controlled substance; or

(b) Any substance which is falsely identified as a controlled substance named or described in s. 893.03.

Section 28. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, section 893.0301, Florida Statutes, is reenacted to read:

893.0301 Death resulting from apparent drug overdose; reporting requirements.—If a person dies of an apparent drug overdose:

(1) A law enforcement agency shall prepare a report identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 which is

found on or near the deceased or among the deceased's possessions. The report must identify the person who prescribed the controlled substance, if known or ascertainable. Thereafter, the law enforcement agency shall submit a copy of the report to the medical examiner.

(2) A medical examiner who is preparing a report pursuant to s. 406.11 shall include in the report information identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 that was found in, on, or near the deceased or among the deceased's possessions.

Section 29. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (7) of section 893.035, Florida Statutes, is reenacted to read:

893.035 Control of new substances; findings of fact; delegation of authority to Attorney General to control substances by rule.—

(7)(a) If the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03 on a temporary basis is necessary to avoid an imminent hazard to the public safety, he or she may by rule and without regard to the requirements of subsection (5) relating to the Department of Health and the Department of Law Enforcement schedule such substance in Schedule I if the substance is not listed in any other schedule of s. 893.03. The Attorney General shall be required to consider, with respect to his or her finding of imminent hazard to the public safety, only those factors set forth in paragraphs (3)(a) and (4)(d), (e), and (f), including actual abuse, diversion from legitimate channels, and clandestine importation,

manufacture, or distribution.

Section 30. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (1) of section 893.05, Florida Statutes, is reenacted to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the same to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under the veterinarian's direction and supervision only. A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 31. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 893.055, Florida Statutes, is reenacted to read:

893.055 Prescription drug monitoring program.—

(1) As used in this section, the term:

(b) "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, or Schedule IV in s. 893.03.

Section 32. For the purpose of incorporating the amendment

made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (5) of section 893.07, Florida Statutes, is reenacted to read:

893.07 Records.—

(5) Each person described in subsection (1) shall:

(b) In the event of the discovery of the theft or significant loss of controlled substances, report such theft or significant loss to the sheriff of that county within 24 hours after discovery. A person who fails to report a theft or significant loss of a substance listed in s. 893.03(3), (4), or (5) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who fails to report a theft or significant loss of a substance listed in s. 893.03(2) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 33. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, paragraphs (b), (c), and (d) of subsection (2) of section 893.12, Florida Statutes, are reenacted to read:

893.12 Contraband; seizure, forfeiture, sale.—

(2)

(b) All real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is used, or intended to be used, in any manner or part, to commit or to facilitate the commission of, or which real property is acquired with proceeds obtained as a result of,

a violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(c) All moneys, negotiable instruments, securities, and other things of value furnished or intended to be furnished by any person in exchange for a controlled substance described in s. 893.03(1) or (2) or a listed chemical in violation of any provision of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of this chapter or which are acquired with proceeds obtained in violation of any provision of this chapter may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(d) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, or which are acquired with proceeds obtained, in violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) or a listed chemical may be seized and forfeited as provided by the Florida Contraband

Forfeiture Act.

Section 34. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (2) of section 944.474, Florida Statutes, is reenacted to read:

944.474 Legislative intent; employee wellness program; drug and alcohol testing.—

(2) An employee of the department may not test positive for illegal use of controlled substances. An employee of the department may not be under the influence of alcohol while on duty. In order to ensure that these prohibitions are adhered to by all employees of the department and notwithstanding s. 112.0455, the department may develop a program for the drug testing of all job applicants and for the random drug testing of all employees. The department may randomly evaluate employees for the contemporaneous use or influence of alcohol through the use of alcohol tests and observation methods. Notwithstanding s. 112.0455, the department may develop a program for the reasonable suspicion drug testing of employees who are in mandatory-testing positions, as defined in s. 440.102(1)(o), or special risk positions, as defined in s. 112.0455(5), for the controlled substances listed in s. 893.03(3)(d). The reasonable suspicion drug testing authorized by this subsection shall be conducted in accordance with s. 112.0455, but may also include testing upon reasonable suspicion based on violent acts or violent behavior of an employee who is on or off duty. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 that are necessary to administer this subsection.

Section 35. For the purpose of incorporating the amendment

made by this act to section 893.033, Florida Statutes, in a reference thereto, subsection (4) of section 893.149, Florida Statutes, is reenacted to read:

893.149 Unlawful possession of listed chemical.—

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, shall be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

Section 36. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 397.451, Florida Statutes, is reenacted to read:

397.451 Background checks of service provider personnel.—

(4) EXEMPTIONS FROM DISQUALIFICATION.—

(b) Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of substance abuse impaired adolescents, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from

disqualification from employment pursuant to this paragraph.

Section 37. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (2) of section 435.07, Florida Statutes, is reenacted to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(2) Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.

Section 38. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (2) of section 772.12, Florida Statutes, is reenacted to read:

772.12 Drug Dealer Liability Act.—

(2) A person, including any governmental entity, has a cause of action for threefold the actual damages sustained and is entitled to minimum damages in the amount of $1,000 and reasonable attorney’s fees and court costs in the trial and appellate courts, if the person proves by the greater weight of the evidence that:

(a) The person was injured because of the defendant's actions that resulted in the defendant's conviction for:

1. A violation of s. 893.13, except for a violation of s. 893.13(2)(a) or (b), (3), (5), (6)(a), (b), or (c), (7); or

2. A violation of s. 893.135; and

(b) The person was not injured by reason of his or her participation in the same act or transaction that resulted in the defendant's conviction for any offense described in subparagraph (a)1.

Section 39. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony

or other qualified offense; or

b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Section 40. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (3) of section 810.02, Florida Statutes, is reenacted to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or

remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be committed therein is theft of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term “conditions arising from the emergency” means civil unrest, power outages,

curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 41. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (2) of section 812.014, Florida Statutes, is reenacted to read:

812.014 Theft.—

(2)(a)1. If the property stolen is valued at $100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

2. If the property stolen is cargo valued at $50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper’s loading platform to the consignee’s receiving dock; or

3. If the offender commits any grand theft and:

a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or

b. In the course of committing the offense the offender causes damage to the real or personal property of another in

excess of $1,000,

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at $300 or more, that is taken from an authorized emergency vehicle, as defined in s. 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in the officer's official business. However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor

under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term “conditions arising from the emergency” means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or

homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $100 or more, but less than $300, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at $100 or more, but less than $300, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

Section 42. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (1) of section 831.311, Florida Statutes, is reenacted to read:

831.311 Unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances.—

(1) It is unlawful for any person having the intent to injure or defraud any person or to facilitate any violation of s. 893.13 to sell, manufacture, alter, deliver, utter, or possess with intent to injure or defraud any person, or to facilitate any violation of s. 893.13, any counterfeit-resistant prescription blanks for controlled substances, the form and content of which are adopted by rule of the Department of Health

pursuant to s. 893.065.

Section 43. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (1) of section 893.1351, Florida Statutes, is reenacted to read:

893.1351 Ownership, lease, rental, or possession for trafficking in or manufacturing a controlled substance.—

(1) A person may not own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 44. For the purpose of incorporating the amendment made by this act to section 893.138, Florida Statutes, in a reference thereto, subsection (3) of section 893.138, Florida Statutes, is reenacted to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;

(b) Section 810.02, relating to burglary;

(c) Section 812.014, relating to dealing in theft;

(d) Section 812.131, relating to robbery by sudden snatching; or

(e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 45. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, section 893.15, Florida Statutes, is reenacted to read:

893.15 Rehabilitation.—Any person who violates s. 893.13(6)(a) or (b) relating to possession may, in the discretion of the trial judge, be required to participate in a substance abuse services program approved or regulated by the Department of Children and Families pursuant to the provisions of chapter 397, provided the director of such program approves the placement of the defendant in such program. Such required participation shall be imposed in addition to any penalty or probation otherwise prescribed by law. However, the total time of such penalty, probation, and program participation shall not exceed the maximum length of sentence possible for the offense.

Section 46. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, section 903.133, Florida Statutes, is reenacted to read:

903.133 Bail on appeal; prohibited for certain felony

convictions.—Notwithstanding the provisions of s. 903.132, no person adjudged guilty of a felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a violation of s. 794.011(2) or (3), shall be admitted to bail pending review either by posttrial motion or appeal.

Section 47. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (l) of subsection (1) of section 921.187, Florida Statutes, is reenacted to read:

921.187 Disposition and sentencing; alternatives; restitution.—

(1) The alternatives provided in this section for the disposition of criminal cases shall be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation. If the offender does not receive a state prison sentence, the court may:

(l)1. Require the offender who violates any criminal provision of chapter 893 to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21 and 938.23.

2. Require the offender who violates any provision of s. 893.13 to pay an additional assessment in an amount of $100, pursuant to ss. 938.055 and 943.361.

Section 48. For the purpose of incorporating the amendment made by this act to section 893.145, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 893.12, Florida Statutes, is reenacted to read:

893.12 Contraband; seizure, forfeiture, sale.—

(2)(a) Any vessel, vehicle, aircraft, or drug paraphernalia as defined in s. 893.145 which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

Section 49. For the purpose of incorporating the amendment made by this act to section 893.145, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 893.147, Florida Statutes, is reenacted to read:

893.147 Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia.—

(6) RETAIL SALE OF DRUG PARAPHERNALIA.—

(a) It is unlawful for a person to knowingly and willfully sell or offer for sale at retail any drug paraphernalia described in s. 893.145(12)(a)-(c) or (g)-(m), other than a pipe that is primarily made of briar, meerschaum, clay, or corn cob.

Section 50. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is reenacted to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling,

kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or

candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; or

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 51. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, is reenacted to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

(3) As used in this section, the term:

(g) "Specified unlawful activity" means "racketeering activity" as defined in s. 895.02.

Section 52. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 896.101, Florida Statutes, is reenacted to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

(2) As used in this section, the term:

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 53. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, section 905.34, Florida Statutes, is reenacted to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(1) Bribery, burglary, carjacking, home-invasion robbery, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, and robbery;

(2) Crimes involving narcotic or other dangerous drugs;

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the

prosecution of the violation of s. 895.03 is terminated for any reason;

(4) Any violation of the provisions of the Florida Anti-Fencing Act;

(5) Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

(6) Any violation of the provisions of chapter 815;

(7) Any crime involving, or resulting in, fraud or deceit upon any person;

(8) Any violation of s. 847.0135, s. 847.0137, or s. 847.0138 relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135, s. 847.0137, or s. 847.0138 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

(9) Any criminal violation of part I of chapter 499;

(10) Any criminal violation of s. 409.920 or s. 409.9201;

(11) Any criminal violation of the Florida Money Laundering Act;

(12) Any criminal violation of the Florida Securities and Investor Protection Act; or

(13) Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any

such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 54. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1528
INTRODUCER:	Regulated Industries Committee and Senator Simpson
SUBJECT:	Illicit Drugs
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	**Fav/CS**
2.	Clodfelter	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1528 amends the schedule of controlled substances in section 893.03, Florida Statutes, to describe, by core structure, the following synthetic controlled substances: synthetic cannabinoids; substituted cathinones; substituted phenethylamines; N-benzyl Phenethylamine compounds; substituted tryptamines; and substituted phenylcyclohexylamines. According to the Office of the Attorney General, the class descriptions define these groups of substances by specific core structure to limit the effect that possible alterations to these substances may have to remove a synthetic or designer drug from the list of controlled substances. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill:

- Revises the definition of the term "substantially similar" for the purpose of determining whether a substance is an analog to a controlled substance. The bill defines the term according to the chemical structure of the substance instead of according to its physiological effect. The bill also provides additional factors for determining whether a substance is an analog of a controlled substance to include comparisons to the accepted methods of marketing, distribution, and sales of the substance.
- Revises the chemical terms for existing controlled substances by correcting errors in existing substance listings and deleting double entries. According to the Office of the Attorney

General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

- Creates a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver, certain unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a $500 fine and 100 hours of community service an addition to any other penalty.
- Creates a third degree felony for a person 18 years of age or older who delivers certain illegal controlled substances to a person under the age of 18, who uses or hires a person under the age of 18 in the sale or delivery of such substance, or who uses a person under the age of 18 to assist in avoiding detection for specified violations.
- Creates a second degree felony for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a medical practitioner or pursuant to a valid prescription or order of a medical practitioner while acting in the course of his or her professional practice.
- Provides that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.
- Includes misbranded drugs in the listing of paraphernalia that are deemed to be contraband and subject to civil forfeiture.

The Criminal Justice Impact Conference has determined that the bill will have a positive indeterminate impact on the prison population, meaning that it will increase the prison population by an amount that cannot be quantified. The Department of Legal Affairs expects that any impact of the bill on criminal justice costs, such as increased costs to the Florida Department of Law Enforcement (FDLE) due to requirements to analyze the newly-scheduled drugs, would be short-lived because the market for the drugs will dry up shortly after they become illegal.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The schedules are as follows:

- A Schedule I substance has a high potential for abuse[1] and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.[2]
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples: cocaine and morphine.[3]

[1] "Potential for abuse" means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user's health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user's own initiative rather than on the basis of professional medical advice. s. 893.02(20), F.S.
[2] Section 893.03(1), F.S.
[3] Section 893.03(2), F.S.

- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.[4]
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples: alprazolam; diazepam; and phenobarbital.[5]
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.[6]

A substance is a "controlled substance" if it is listed in any of the five schedules in s. 893.03, F.S. The particular scheduling determines penalties, i.e. which penalties may be imposed for unlawful possession, sale, manufacture, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc.

The sale, manufacture, and delivery of a controlled substance listed in s. 893.03(1)(c), F.S., (Schedule I(c)), as well as the possession with intent to sell, manufacture, or deliver such substance, is considered a third degree felony.[7] However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.[8] For example, selling a controlled substance listed in Schedule I(c) within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.[9] Other prohibited activities include bringing a controlled substance listed in Schedule I(c) into the state and the purchase or possession with intent to purchase such a controlled substance, which are all third degree felonies.[10]

Synthetic Drugs

Synthetic drugs mimic the effects of controlled substances. Synthetic drugs are also known as "new or novel psychoactive substances," or "designer drugs." Synthetic drugs are used to circumvent existing prohibitions on controlled substances. According to the Office of the

[4] Section 893.03(3), F.S.
[5] Section 893.03(4), F.S.
[6] Section 893.03(5), F.S.
[7] Section 893.13(9), F.S., provides that the provisions of s. 893.13(1)-(8), F.S., are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in certain classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties. *See also* s. 893.13(1)(a)2., F.S. A third degree felony is punishable by up to five years in state prison, a fine of up to $5,000, or both. ss. 775.082 and 775.083, F.S.
[8] Section 893.13(1)(c)-(f) and (h), F.S.
[9] Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both.
[10] Section 893.13(5)(b) and (2)(a)2., F.S.

Attorney General, the increasing number of synthetic drug variants available and the higher toxicity of the new variants poses an increasing public health threat.

Concerned about the use of synthetic drugs in Broward County, the State Attorney took the issue to the grand jury. On December 30, 2015, the 17th Judicial Circuit State Attorney's Office released a grand jury report. The report examined the extent of the problem of synthetic drugs in Broward County and made several recommendations, including a recommendation for legislation to address the problem.

The grand jury report attributed more than 60 recent deaths to "Flakka."[11] According to information provided by the Attorney General's Office and the grand jury report, synthetic drugs are typically manufactured in pharmaceutical factories in China or Southeast Asia and are often sold through the internet.

Controlled substance "analogs" are new substances that are not controlled under ch. 893, F.S., but which have a "potential for abuse" and are manufactured, distributed, possessed, and used as substitutes for controlled substances.[12] Controlled substance analogs are treated, for purposes of drug abuse prevention and control, as a controlled substance in Schedule I of s. 893.03, F.S. Section 893.0356(3), F.S., defines the term "potential for abuse" in relation to properties as a central nervous system stimulant, depressant, or hallucinogen. The definition also requires that the substance create a substantial likelihood of being:

(a) Used in amounts that create a hazard to the user's health or the safety of the community;
(b) Diverted from legal channels and distributed through illegal channels; or
(c) Taken on the user's own initiative rather than on the basis of professional medical advice.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

Section 893.0356(3), F.S., provides that the potential for abuse is proven by showing "that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances."

When a new synthetic drug is initially introduced, it may not necessarily be controlled or illegal under state or federal law. The Florida Attorney General may adopt emergency rules to add the new synthetic drug to the controlled substance schedule.[13] The Legislature then can amend the

[11] See *Interim Report of the Broward County Grand Jury, July through December Term, 2015, Synthetic Drug Investigation*, December 30, 2015. A copy of the report is available at: http://www.bbhcflorida.org/sites/default/files/Signed%20Final%20Report-GJ%20Syn%20Drug%20Investigation.pdf (last visited February 4, 2016).
[12] Section 893.0356, F.S.
[13] *See* ss. 893.035 and 893.0356, F.S.

controlled substances schedule to incorporate the new synthetic drug. Since 2011, 136 chemical compounds commonly used to produce synthetic drugs have been added to the schedule of controlled substances, including alpha-PVP, which is the main ingredient in the synthetic form of cathinone drug popularly known as "Flakka."[14]

According to the Office of the Attorney General, the core synthetic drugs of concern in Florida fall into the following categories or classifications:[15]

- Synthetic cannabinoids, such as "K2" or "Spice", which produce a high similar to cannabis;
- Substituted cathinones, commonly sold as "bath salts," which are central nervous system stimulants with stimulant properties related to cathinone, the psychoactive substance found in the shrub Catha edulis (khat) and produce pharmacological effects similar to methamphetamine, amphetamines, cocaine, Khat, LSD, and MDMA (Substituted Cathinones are central nervous system stimulants with no medicinal application and a tendency for dependence);
- Substituted phenethylamines, which mimic the effects of stimulants and/or hallucinogens, including amphetamine, methamphetamine, and MDMA;
- N-benzyl Phenethylamines, which are derivatives of the phenethylamine molecule by substitution that significantly increases the potency of the molecule, and are a potent hallucinogen and alternative to LSD;
- Substituted tryptamines, which are hallucinogenic substances; and
- Substituted phenylcyclohexylamines, which are comparable to PCP intoxication and results in behavioral/psychological effects from neurologic and physiologic abnormalities, stupor, or light or deep coma.

There are other potential classifications of drugs,[16] but according to the Office of the Attorney General, these classifications describe the top designer drugs of concern in Florida.

Approaches to Synthetic Drug Enforcement[17]

Three states, the District of Columbia, and the federal government schedule synthetic cannabinoids using the "neurochemical approach." This approach schedules the substances according to the effect they have on the brain rather than through either the listing of specific

[14] See *Attorney General Pam Bondi News Release*, January 5, 2016, available at: http://www.myfloridalegal.com/newsrel.nsf/newsreleases/0C7B568A9CF4695385257F31005F4485 (last visited February 4, 2016).
[15] The following information is derived from the Summary Bill Analysis provided by the Florida Office of the Attorney General. A copy is on file with the Senate Regulated Industries Committee.
[16] These include: adamantoylindoles, adamantoylindazoles, benzoylindoles, cyclohexylphenols, cyclopropanoylindoles, naphthoylindoles, naphthoylnaphthalenes, naphthoylpyrroles, naphthylmethylindenes, naphthylmethylindoles, phenylacetylindoles, quinolinylindolecarboxylates, tetramethylcyclopropanoylindoles, and tetramethylcyclopropane-thiazole carboxamides. *See* National Alliance for Model State Drug Laws, Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States, 2015. A copy is available at: http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20 (lasted visited February 4, 2016)
[17] For more information on how the federal government and other states and jurisdictions have addressed the issue of synthetic drug enforcement, see Gray, Heather, *Overview of Novel Psychoactive Substances and State Responses*, October 2014 at http://www.wardwebsites.net/conference2014/presentations/gray.pdf (last visited February 4, 2016).

substances or through the use of class definitions.[18] The advantage of scheduling cannabinoids using the neurochemical approach is that states may not need to continually update the schedules of substances each time a new drug is created or introduced. However, there is uncertainty in determining the proof required to obtain a conviction under this method.[19]

Some states use an "analogue approach" to identify synthetic drugs. Under an analogue approach, prosecutors must prove that a substance is both substantially similar structurally to a Schedule I or II controlled substance and that it has either substantially similar effect on the body or that the person represents or intends the substance to have a substantially similar effect on the body as the controlled substance.[20] The advantage of using the analogue approach is that it covers every substance so long as it is structurally similar to a Schedule I or II substance. However, the analogue approach does not provide clear guidance on what constitutes "substantially similar."[21]

Many states use these class definitions to schedule synthetic drugs or specify each novel psychoactive substance individually in the controlled substance schedule by its specific chemical structure or trade/street name. The vast majority of states in the United States use one of these two scheduling approaches or both in combination. The advantage of scheduling substances by class definition is that a prosecutor only needs to prove that the substance falls within a particular class. A prosecutor does not necessary have to prove its structural similarity to another substance or its effect on the body. Most states also include specific substances as examples of the particular class in the definition. The principal disadvantage to scheduling synthetic drugs through a classification approach is that if a substance does not fall within a particular named class and is not otherwise specifically listed, the substance is "legal" until it is particularly scheduled, although the state or federal analogue statute could fill the void until the substance is scheduled.[22]

Among the recommendations in its report, the Broward County Grand Jury recommended that the Legislature adopt a classification system to include synthetic drugs within the existing provisions of s. 893.13, F.S.[23]

Chapter 499 - Florida Drug and Cosmetic Act

The Florida Drug and Cosmetic Act in ch. 499, F.S., consists of three parts that cover drugs, devices, cosmetics, and household products; ether; and medical gas. Section 499.003(18), F.S., defines the term drug to mean an article that is:

> (a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic

[18] National Alliance for Model State Drug Laws, *Neurochemical Approach to Scheduling Novel Psychoactive Substances in the United States*, 2015. A copy is available at: http://www.namsdl.org/library/FF633AB8-AA08-77FD-6A4EB68D8CD0DE20 (last visited February 4, 2016).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See* note 11.

> Pharmacopoeia of the United States, or any supplement to any of those publications;
> (b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;
> (c) Intended to affect the structure or any function of the body of humans or other animals; or
> (d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. For purposes of this paragraph, an "active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

Section 499.005, F.S., specifies prohibited acts, including the manufacture, repackaging, sale, delivery, or holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded or has otherwise been rendered unfit for human or animal use.

Section 499.0051, F.S., provides criminal acts and criminal penalties under ch. 499, F.S., including the knowing sale or transfer of a prescription drug to an unauthorized person in a wholesale transaction (second degree felony); the knowing sale or delivery, or possession with intent to sell, contraband prescription drugs (second degree felony); and knowing trafficking in contraband prescription drugs (first degree felony).[24]

III. Effect of Proposed Changes:

Controlled Substances

The bill amends s. 893.02, F.S., to define and revise definitions for chemical terms used in ch. 893, F.S., including "cannabinoid receptor agonist," "homologue," "nitrogen-heterocyclic analog," and "positional isomer."

The bill amends s. 893.03, F.S., to describe, by core structure, the following synthetic controlled substances:

- Synthetic cannabinoids;
- Substituted cathinones;
- Substituted phenethylamines;
- N-benzyl phenethylamine compounds;
- Substituted tryptamines; and

[24] Section 499.003(11), F.S., defines a contraband prescription drug as follows: "any adulterated drug, as defined in s. 499.006, any counterfeit drug, as defined in this section, and also means any prescription drug for which a pedigree paper does not exist, or for which the pedigree paper in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter."

- Substituted phenylcyclohexylamines.

According to the Office of the Attorney General, the class descriptions define these groups of substances by specific core structure to limit the effect that possible alterations to these substances may have in regards to remaining subject to the prohibitions in ch. 893, F.S. Each class description includes examples of compounds that are covered by the class description. The criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances will apply to these synthetic substances.

The bill amends s. 893.0356(3), F.S., to revise the definition of the term "substantially similar" to relate to the chemical structure of the substance. A substance is substantially similar to a controlled substance if it has a single difference in the structural formula that substitutes one atom or functional group for another, including, but not limited to, one halogen for another halogen, one hydrogen for a halogen or vice versa, an alkyl group added or deleted as a side chain to or from a molecule, or an alkyl group added or deleted from a side chain of a molecule.

The bill also amends s. 893.0356(4)(j), F.S., to provide additional factors for determining whether a substance is an analog of a controlled substance, including comparisons to the accepted methods of marketing, distribution, and sales of the substance.

The bill also amends ss. 893.03, 893.033, and 893.135, F.S., to revise the chemical terms for existing substances by correcting errors in existing substance listings and deleting double entries. According to the Office of the Attorney General, the chemical terms in these provisions were reviewed by chemists and the revisions in this bill are based on their recommendations.

Prohibitions

The bill amends s. 893.13(1)(h), F.S., to create a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver, any unlawful controlled substance in, on, or near an assisted living facility. The noncriminal penalty is a $500 fine and 100 hours of community service and is in addition to any other lawful penalty for the offense. This noncriminal penalty refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in the paragraph.

The bill amends s. 893.13(4)(c), F.S., to create a felony of the third degree for a person 18 years of age or older who delivers any illegal controlled substance to a person younger than 18 years of age, who uses or hires a person younger than 18 years of age in the sale or delivery of such substance, or who uses a person younger than 18 years of age to assist in avoiding detection for specified violations. This criminal violation refers to the remaining controlled substances listed in s. 893.03, F.S., that are not specifically listed in the subsection.

The bill amends s. 921.0022, F.S., to revise the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony

offender whose offense was committed on or after October 1, 1998. The bill revises the chart to include a violation of s. 893.13(4)(c), F.S., as a "Level 3" violation.[25]

The bill amends s. 893.13(6)(d), F.S., to create a felony of the second degree for actual or constructive possession of a Schedule V controlled substance unless the controlled substance was lawfully obtained from a practitioner[26] or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

Nuisance Violations

The bill amends s. 893.0138(2), F.S., to provide that a place or premises that has been used on two or more occasions within a six-month period as a site of a violation of ch. 499, F.S., may be declared a public nuisance and abated.

Drug Paraphernalia

The bill amends s. 893.145, F.S., to include misbranded drugs in the listing of paraphernalia that is deemed to be contraband and subject to civil forfeiture.

Effective Date

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[25] The offense severity ranking chart in s. 921.0022, F.S., has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense.

[26] Section 893.02(21), F.S., defines the term "practitioner" to mean "a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed pursuant to chapter 463, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the Attorney General and the Florida Department of Law Enforcement anticipate that, under CS/SB 1528, the FDLE's Crime Laboratory workload may experience an initial increase in costs associated with the testing of confiscated substances. However, the agencies further anticipate that the increase will be short-lived as the market for the substances is disrupted.

The Criminal Justice Impact Conference determined that CS/SB 1528 will have a positive indeterminate impact on the prison population, meaning that it will increase the prison population by an amount that cannot be quantified.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.02, 893.03, 893.033, 893.0356, 893.13, 893.135, 893.138, 893.145, 895.02, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 39.01, 316.193, 322.2616, 327.35, 440.102, 456.44, 458.326, 458.3265, 459.0137, 463.0055, 465.0276, 499.0121, 499.029, 782.04, 787.06, 817.563, 831.31, 893.0301, 893.035, 893.05, 893.055, 893.07, 893.12, 893.138, 944.474, 893.149, 397.451, 435.07, 772.12, 775.084, 810.02, 812.014, 831.311, 893.1351, 893.15, 903.133, 921.187, 893.147, 16.56, 655.50, 896.101, and 905.34.

IX. Additional Information:

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

CS by Regulated Industries on January 27, 2016:
The committee substitute does not amend ss. 561.29 and 569.003, F.S., to require the division to suspend an alcoholic beverage license for one year upon a finding a person has been convicted of a violation of ch. 499, F.S.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Simpson

580-02679-16 20161528c1

A bill to be entitled

An act relating to illicit drugs; amending s. 893.02, F.S.; defining terms; deleting a definition; revising definitions; amending s. 893.03, F.S.; providing that class designation is a way to reference scheduled controlled substances; adding, deleting, and revising the list of Schedule I controlled substances; revising the list of Schedule III anabolic steroids; amending s. 893.033, F.S.; adding, deleting, and revising the list of precursor and essential chemicals; amending s. 893.0356, F.S.; defining the term "substantially similar"; deleting the term "potential for abuse"; requiring that a controlled substance analog be treated as the highest scheduled controlled substance of which it is an analog; amending s. 893.13, F.S.; creating a noncriminal penalty for selling, manufacturing, or delivering, or possessing with intent to sell, manufacture, or deliver any unlawful controlled substance in, on, or near an assisted living facility; creating a criminal penalty for a person 18 years of age or older who delivers to a person younger than 18 years of age any illegal controlled substance, who uses or hires a person younger than 18 years of age in the sale or delivery of such substance, or who uses a person younger than 18 years of age to assist in avoiding detection for specified violations; deleting a criminal penalty for possession of a certain amount of specified controlled substances; deleting certain exclusions to the definition of the term "cannabis"; creating a criminal penalty for possession of specified controlled substances; correcting a cross-reference; amending s.

580-02679-16 20161528c1

893.135, F.S.; revising a dosage unit to include a gelatin capsule for the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance; amending s. 893.138, F.S.; authorizing a place or premises that has been used on two or more occasions for specified violations within a certain time period to be declared a public nuisance; amending s. 893.145, F.S.; revising the definition of the term "drug paraphernalia"; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity"; amending s. 921.0022, F.S.; adding an adult delivering controlled substances to a minor, using or hiring a minor to sell controlled substances, or using a minor to avoid detection or apprehension to level 3 of the offense severity ranking chart of the Criminal Punishment Code; making technical changes; reenacting ss. 39.01(30)(a) and (g), 316.193(5), 322.2616(2)(c), 327.35(5), 440.102(11)(b), 456.44(2), 458.326(3), 458.3265(1)(e), 459.0137(1)(e), 463.0055(4)(a), 465.0276(1)(b), 499.0121(14) and (15)(a), 499.029(3)(a), 782.04(1) and (4), 787.06(2)(a), 817.563(1), 831.31, 893.0301, 893.035(7)(a), 893.05(1), 893.055(1)(b), 893.07(5)(b), 893.12(2)(b), (c), and (d), and 944.474(2), F.S., to incorporate the amendment made to s. 893.03, F.S., in references thereto; reenacting s. 893.149(4), F.S., to incorporate the amendment made to s. 893.033, F.S., in a reference thereto; reenacting ss. 397.451(4)(b),

435.07(2), 772.12(2), 775.084(1)(a), 810.02(3), 812.014(2), 831.311(1), 893.1351(1), 893.138(3), 893.15, 903.133, and 921.187(1)(l), F.S., to incorporate the amendment made to s. 893.13, F.S., in references thereto; reenacting ss. 893.12(2)(a) and 893.147(6)(a), F.S., to incorporate the amendment made to s. 893.145, F.S., in references thereto; reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g), and 905.34, F.S., to incorporate the amendment made to s. 895.02, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (2), (11), and (16) of section 893.02, Florida Statutes, are amended, new subsections (17) and (20) are added to that section, present subsections (17), (18), (19), (20), (21), (22), and (23) of that section are redesignated as subsections (18), (19), (21), (22), (23), (24), and (25), respectively, and subsections (4) and (14) are republished, to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(2) "Cannabinoid receptor agonist" means a chemical compound or substance that, according to scientific or medical research, study, testing, or analysis demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body ~~"Analog" or~~

~~"chemical analog" means a structural derivative of a parent compound that is a controlled substance~~.

(4) "Controlled substance" means any substance named or described in Schedules I-V of s. 893.03. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws.

(11) "Homologue" means a chemical compound in a series in which each compound differs by one or more repeating hydrocarbon functional group units at any single point within the compound ~~alkyl functional groups on an alkyl side chain~~.

(14) "Listed chemical" means any precursor chemical or essential chemical named or described in s. 893.033.

(16) "Mixture" means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.

(17) "Nitrogen-heterocyclic analog" means an analog of a controlled substance which has a single carbon atom in a cyclic structure of a compound replaced by a nitrogen atom.

(20) "Positional isomer" means any substance that possesses the same molecular formula and core structure and that has the same functional group or substituent as those found in the respective controlled substance, attached at any positions on the core structure, but in such manner that no new chemical functionalities are created and no existing chemical functionalities are destroyed relative to the respective controlled substance. Rearrangements of alkyl moieties within or between functional groups or substituents, or divisions or

combinations of alkyl moieties, which do not create new chemical functionalities or destroy existing chemical functionalities, are allowed and include resulting compounds that are positional isomers. As used in this definition, the term "core structure" means the parent molecule that is the common basis for the class that includes, but is not limited to, tryptamine, phenethylamine, or ergoline. Examples of rearrangements resulting in creation or destruction of chemical functionalities, and therefore resulting in compounds that are not positional isomers, include, but are not limited to, ethoxy to alpha-hydroxyethyl, hydroxy and methyl to methoxy, or the repositioning of a phenolic or alcoholic hydroxy group to create a hydroxyamine. Examples of rearrangements resulting in compounds that would be positional isomers, include, but are not limited to, tert-butyl to sec-butyl, methoxy and ethyl to isopropoxy, N,N-diethyl to N-methyl-N-propyl, or alpha-methylamino to N-methylamino.

Section 2. Section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, ~~or~~ trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted

Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.

2. Acetylmethadol.

3. Allylprodine.

4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

5. Alphamethadol.

6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

7. Alpha-methylthiofentanyl.

8. Alphameprodine.

9. Benzethidine.

10. Benzylfentanyl.

11. Betacetylmethadol.

12. Beta-hydroxyfentanyl.

13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-Propionoxypiperidine) ~~(MPPP)~~.
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.

40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.
43. Norpipanone.
44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.
48. Phenoperidine.
49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine) ~~(PEPAP)~~.
50. Piritramide.
51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tilidine.
58. Trimeperidine.
59. Acetylfentanyl.
60. Butyrylfentanyl.
61. Beta-Hydroxythiofentanyl.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.

2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Drotebanol.
10. Etorphine (except hydrochloride salt).
11. Heroin.
12. Hydromorphinol.
13. Methyldesorphine.
14. Methyldihydromorphine.
15. Monoacetylmorphine.
16. Morphine methylbromide.
17. Morphine methylsulfonate.
18. Morphine-N-Oxide.
19. Myrophine.
20. Nicocodine.
21. Nicomorphine.
22. Normorphine.
23. Pholcodine.
24. Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, homologues, nitrogen-heterocyclic analogs, esters, ethers, and

salts of isomers, homologues, nitrogen-heterocyclic analogs, esters, or ethers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation or class description:

1. Alpha-Ethyltryptamine.
2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-oxazoline) ~~(4-methylaminorex)~~.
3. Aminorex (2-Amino-5-phenyl-2-oxazoline) ~~(Aminorex)~~.
4. DOB (4-Bromo-2,5-dimethoxyamphetamine).
5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
6. Bufotenine.
7. Cannabis.
8. Cathinone.
9. DET (Diethyltryptamine).
10. 2,5-Dimethoxyamphetamine.
11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine) ~~2,5-Dimethoxy-4-ethylamphetamine (DOET)~~.
12. DMT (Dimethyltryptamine).
13. PCE (N-Ethyl-1-phenylcyclohexylamine) ~~(PCE)~~(Ethylamine analog of phencyclidine).
14. JB-318 (N-Ethyl-3-piperidyl benzilate).
15. N-Ethylamphetamine.
16. Fenethylline.
17. 3,4-Methylenedioxy-N-hydroxyamphetamine ~~N-Hydroxy-3,4-methylenedioxyamphetamine~~.
18. Ibogaine.
19. LSD (Lysergic acid diethylamide) ~~(LSD)~~.
20. Mescaline.
21. Methcathinone.

22. 5-Methoxy-3,4-methylenedioxyamphetamine.
23. PMA (4-Methoxyamphetamine).
24. PMMA (4-Methoxymethamphetamine).
25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
27. MDA (3,4-Methylenedioxyamphetamine).
28. JB-336 (N-Methyl-3-piperidyl benzilate).
29. N,N-Dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) ~~(PCPY)~~ (Pyrrolidine analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
~~37. Tetrahydrocannabinols.~~
37. Xylazine.
38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) ~~(TCP)~~

(Thiophene analog of phencyclidine).
39. 3,4,5-Trimethoxyamphetamine.
40. Methylone (3,4-Methylenedioxymethcathinone).
41. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~.
42. Methylmethcathinone.
43. Methoxymethcathinone.
44. Fluoromethcathinone.
45. Methylethcathinone.
46. CP 47,497 (2-(~~[~~(1R,3S)~~-~~3-Hydroxycyclohexyl)~~]~~-5-(2-methyloctan-2-yl)phenol)~~, also known as CP 47,497~~ and its dimethyloctyl (C8) homologue.
47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol]~~, also known as HU-210~~.
48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole)~~, also known as JWH-018~~.
49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole)~~, also known as JWH-073~~.
50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)~~, also known as JWH-200~~.
51. BZP (Benzylpiperazine).
52. Fluorophenylpiperazine.
53. Methylphenylpiperazine.
54. Chlorophenylpiperazine.
55. Methoxyphenylpiperazine.
56. DBZP (1,4-Dibenzylpiperazine).
57. TFMPP (~~3-~~Trifluoromethylphenylpiperazine).
58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).

59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
60. 5-Hydroxy-N-methyltryptamine.
61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
63. Methyltryptamine.
64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
66. Tyramine (4-Hydroxyphenethylamine).
67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
68. DiPT (N,N-Diisopropyltryptamine).
69. DPT (N,N-Dipropyltryptamine).
70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine) ~~N,N-Diallyl-5-Methoxytryptamine~~.
72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-isopropylthiophenethylamine)~~.
76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-methylthiophenethylamine)~~.
78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-ethylthiophenethylamine)~~.
79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine) ~~2,5-Dimethoxy-4-(n)-propylthiophenethylamine)~~.
80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
81. Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone) ~~beta-keto-N-~~

~~methylbenzodioxolylpropylamine)~~.
82. Ethcathinone.
83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
84. Naphyrone (Naphthylpyrovalerone).
85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone) ~~N-N-Dimethyl-3,4-methylenedioxycathinone~~.
86. 3,4-Methylenedioxy-N,N-diethylcathinone ~~N-N-Diethyl-3,4-methylenedioxycathinone~~.
87. 3,4-Methylenedioxy-propiophenone.
88. 3,4-Methylenedioxy-alpha-bromopropiophenone ~~2-Bromo-3,4-Methylenedioxypropiophenone~~.
89. 3,4-Methylenedioxy-propiophenone-2-oxime.
90. 3,4-Methylenedioxy-N-acetylcathinone ~~N-Acetyl-3,4-methylenedioxycathinone~~.
91. 3,4-Methylenedioxy-N-acetylmethcathinone ~~N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone~~.
92. 3,4-Methylenedioxy-N-acetylethcathinone ~~N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone~~.
93. Bromomethcathinone.
94. Buphedrone (alpha-Methylamino-butyrophenone).
95. Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone) ~~beta-Keto-Ethylbenzodioxolylbutanamine)~~.
96. Dimethylcathinone.
97. Dimethylmethcathinone.
98. Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone) ~~(beta-Keto-Methylbenzodioxolylpentanamine)~~.
99. MDPPP (3,4-Methylenedioxy-alpha-

pyrrolidinopropiophenone) ~~(MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone~~.

100. MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone) ~~(MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone~~.

101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone) ~~(MOPPP)~~.

102. MPHP (Methyl-alpha-pyrrolidinohexanophenone) ~~Methyl-alpha-pyrrolidinohexiophenone (MPHP)~~.

103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine) ~~Benocyclidine (BCP) or benzothiophenylcyclohexylpiperidine (BTCP)~~.

104. F-MABP (Fluoromethylaminobutyrophenone) ~~(F-MABP)~~.

105. MeO-PBP (Methoxypyrrolidinobutyrophenone) ~~(MeO-PBP)~~.

106. Et-PBP (Ethyl-pyrrolidinobutyrophenone) ~~(Et-PBP)~~.

107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone) ~~(3-Me-4-MeO-MCAT)~~.

108. Me-EABP (Methylethylaminobutyrophenone) ~~(Me-EABP)~~.

109. Etizolam ~~Methylamino-butyrophenone (MABP)~~.

110. PPP (Pyrrolidinopropiophenone) ~~(PPP)~~.

111. PBP (Pyrrolidinobutyrophenone) ~~Pyrrolidinobutiophenone (PBP)~~.

112. PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone) ~~(PVP)~~.

113. MPPP (Methyl-alpha-pyrrolidinopropiophenone) ~~(MPPP)~~.

114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole) ~~2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone)~~.

116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) ~~Naphthalen-1-yl-(1-hexylindol-3-yl)methanone)~~.

117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole) ~~Naphthalen-1-yl-(1-propyl-1H-indol-3-yl)methanone)~~.

119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole) ~~4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone)~~.

120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene) ~~((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran))~~.

122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole) ~~3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole)~~.

123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole) ~~2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone)~~.

125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole) ~~4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone)~~.

126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole) ~~2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone)~~.

127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole) ~~2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone)~~.

128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]

methanol).

132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).

133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene) ~~Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone)~~.

134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).

135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).

136. CP 55,940 (2-[3-Hydroxy-5-propanol-cyclohexyl]-5-(2-methyloctan-2-yl)phenol) ~~2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol)~~.

137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole) ~~1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone)~~.

138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole) ~~1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone)~~.

139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole) ~~(4-methoxyphenyl)-(1-pentyl-1H-indol-3-yl)methanone)~~.

140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole) ~~1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone)~~.

141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

143. Pentedrone (alpha-Methylaminovalerophenone) ~~2-(methylamino)-1-phenyl-1-pentanone)~~.

144. Fluoroamphetamine.

145. Fluoromethamphetamine.

146. Methoxetamine.

147. Methiopropamine.

148. ~~4-~~Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone) ~~2-Methylamino-1-(4-methylphenyl)butan-1-one)~~.

149. APB ((2-Aminopropyl)benzofuran).

150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).

151. UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)~~.

152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)~~.

153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole) ~~(1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone~~.

154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide) ~~1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indazole-3-carboxamide)~~.

155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole) ~~(2-iodophenyl)[1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]-methanone)~~.

156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide) ~~1-(5-fluoropentyl)-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide)~~.

157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-

cyclohexylcarbamate).

158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one).

160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine) ~~2-(2,5-Dimethoxy-4-methylphenyl)ethanamine)~~.

161. 2C-H (2,5-Dimethoxyphenethylamine) ~~2-(2,5-Dimethoxyphenyl)ethanamine)~~.

162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine) ~~2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine)~~.

163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine) ~~2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine)~~.

164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) ~~4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine)~~.

165. MDMA (3,4-Methylenedioxymethamphetamine) ~~(MDMA)~~.

166. PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate) ~~1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid)~~.

167. ~~5-~~Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate) ~~8-quinolinyl ester-1-(5-fluoropentyl)-1H-indole-3-carboxylic acid)~~.

168. BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate) ~~1-(cyclohexylmethyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid)~~.

169. ~~5-~~Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide) ~~N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)~~.

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide) ~~N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)~~.

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide) ~~N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)~~.

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide) ~~N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)~~.

173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide) ~~N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)-1H-indole-3-carboxamide)~~.

174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) ~~4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine)~~.

175. 25~~C-~~C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine) ~~4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine)~~.

176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide) ~~: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide~~.

177. FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate) ~~: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate~~.

178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide) ~~: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide~~.

179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide) ~~: Methyl 2-(1-~~

~~(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate~~.

180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole)~~:~~ ~~[1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone~~.

181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol).

185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol).

186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

187. MAPB ((2-Methylaminopropyl)benzofuran).

188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

190. Synthetic Cannabinoids. Unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical class descriptions, or homologues, nitrogen-heterocyclic analogs,

isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or the compounds of these structures shall be included under this subparagraph, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

a. Tetrahydrocannabinols. Any tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis*, the synthetic equivalents of the substances contained in the plant or in the resinous extracts of the genus *Cannabis*, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to, Delta 9 tetrahydrocannabinols and their optical isomers, Delta 8 tetrahydrocannabinols and their optical isomers, Delta 6a,10a tetrahydrocannabinols and their optical isomers, or any compound containing a tetrahydrobenzo[c]chromene structure with substitution at the 3-position or substitution at the 9-position, with or without substitution at the 1-position with hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-

(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.

b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles. Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure, with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

(II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-

naphthoyl)indole).

(III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

(IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

(V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

(VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

(VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

(VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

(IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

(X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

(XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

(XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

(XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

(XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole).

(XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

(XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

(XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-naphthoyl)indole).

(XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

(XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

(XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

(XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

(XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-naphthylmethyl]indole).

(XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-naphthoyl)indole).

(XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-naphthoyl)indole).

(XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)

indole).

(XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).

(XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

(XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

(XXVIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).

(XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).

(XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole).

(XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-naphthoyl)indole).

(XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).

(XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-naphthoyl)indole).

(XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-naphthoyl)indole).

(XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).

(XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

(XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole).

(XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-naphthoyl)indole).

(XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

(XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-naphthoyl)carbazole).

c. Naphthoylpyrroles. Any compound containing a naphthoylpyrrole structure, with or without substitution on the pyrrole ring to any extent, whether or not substituted on the

naphthyl ring to any extent, including, but not limited to:

(I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

(II) JWH-031 (1-Hexyl—3-(1-naphthoyl)pyrrole).

(III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-naphthoyl)pyrrole).

(VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-naphthoyl)pyrrole).

(X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole).

d. Naphthylmethylenindenes. Any compound containing a naphthylmethylenindene structure, with or without substitution at the 3-position of the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to, JWH-176 (3-Pentyl-1-(naphthylmethylene)indene).

e. Phenylacetylindoles and Phenylacetylindazoles. Any compound containing a phenylacetylindole or phenylacetylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

(II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

(III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

(IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

(V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

(VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

(VII) Cannabipiperidiethanone.

(VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

f. Cyclohexylphenols. Any compound containing a cyclohexylphenol structure, with or without substitution at the 5-position of the phenolic ring to any extent, whether or not substituted on the cyclohexyl ring to any extent, including, but not limited to:

(I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).

(II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).

(III) CP-55,940 (2-(3-Hydroxy-5-propanol-cyclohexyl)-5-(2-methyloctan-2-yl)phenol).

g. Benzoylindoles and Benzoylindazoles. Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

(II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

(III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodo-5-nitrobenzoyl)indole).

(IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).

(V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

(VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

(VII) RCS-4 C4 homologue (1-Butyl-3-(4-methoxybenzoyl)indole).

(VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-3-(4-methoxybenzoyl)indole).

h. Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles. Any compound containing a tetramethylcyclopropanoylindole or tetramethylcyclopropanoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the tetramethylcyclopropyl group to any extent, including, but not limited to:

(I) UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-

tetramethylcyclopropanoyl)indazole).

(IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole carboxamides, and Adamantylindazole carboxamides. Any compound containing an adamantoyl indole, adamantoyl indazole, adamantyl indole carboxamide, or adamantyl indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent, including, but not limited to:

(I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

(II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

(III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

(IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-adamantoyl)indole).

(V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

(VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

(VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-adamantoyl)indole).

j. Quinolinylindolecarboxylates, Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides, and Quinolinylindazolecarboxamides. Any compound containing a quinolinylindole carboxylate, quinolinylindazole carboxylate, isoquinolinylindole carboxylate, isoquinolinylindazole carboxylate, quinolinylindole carboxamide, quinolinylindazole

carboxamide, isoquinolinylindole carboxamide, or isoquinolinylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the quinoline or isoquinoline ring to any extent, including, but not limited to:

(I) PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

(II) Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

(III) BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

(IV) FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) NPB-22 (8-Quinolinyl 1-pentylindazole-3-carboxylate).

(VI) Fluoro NPB-22 (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxylate).

(VII) FUB-NPB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indazole-3-carboxylate).

(VIII) THJ (8-Quinolinyl 1-pentylindazole-3-carboxamide).

(IX) Fluoro THJ (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxamide).

k. Naphthylindolecarboxylates and Naphthylindazolecarboxylates. Any compound containing a naphthylindole carboxylate or naphthylindazole carboxylate structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-carboxylate).

(II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-

carboxylate).

(III) Fluoro SDB-005 (1-Naphthalenyl 1-(fluoropentyl)indazole-3-carboxylate).

(IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-carboxylate).

l. Naphthylindole carboxamides and Naphthylindazole carboxamides. Any compound containing a naphthylindole carboxamide or naphthylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

(II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

(III) Chloro-NNEI (N-Naphthalen-1-yl 1-(chloropentyl) indole-3-carboxamide).

(IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-carboxamide).

(V) Fluoro MN-18 (N-Naphthalen-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl indazole carboxamides, Alkylcarbonyl indole carboxylates, and Alkylcarbonyl indazole carboxylates. Any compound containing an alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an indole carboxamide, indazole carboxamide, indole carboxylate, or

indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent, including, but not limited to:

(I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-

pentylindazole-3-carboxamide).

(XIV) Fluoro AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

(XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indole-3-carboxamide).

(XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide).

(XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

n. Cumylindolecarboxamides and Cumylindazolecarboxamides. Any compound containing a N-(2-phenylpropan-2-yl) indole carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring of the cumyl group to any extent, including, but not limited to:

(I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-

carboxamide).

(II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

o. Other Synthetic Cannabinoids. Any material, compound, mixture, or preparation that contains any quantity of a Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

(I) With or without modification or replacement of a carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage between two core ring or group structures with or without the addition of a carbon or replacement of a carbon;

(II) With or without replacement of a core ring or group structure, whether or not substituted on the ring or group structures to any extent; and

(III) Is a cannabinoid receptor agonist, unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

191. Substituted Cathinones. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations:

a. Any compound containing a 2-amino-1-phenyl-1 propanone structure;

b. Any compound containing a 2-amino-1-naphthyl-1-propanone structure; or

c. Any compound containing a 2-amino-1-thiophene-1-propanone structure,

whether or not the compound is further modified:

(I) With or without substitution on the ring system to any extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy, haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide substituents;

(II) With or without substitution at the 3-propanone position with an alkyl substituent or removal of the methyl group at the 3-propanone position;

(III) With or without substitution at the 2-amino nitrogen atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system; or

(IV) With or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

(A) Methcathinone.

(B) Ethcathinone.

(C) Methylone (3,4-Methylenedioxymethcathinone).

(D) 2,3-Methylenedioxymethcathinone.

(E) MDPV (3,4-Methylenedioxypyrovalerone).

(F) Methylmethcathinone.

(G) Methoxymethcathinone.

(H) Fluoromethcathinone.

(I) Methylethcathinone.

(J) Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).

(K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).

(L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).

(M) Naphyrone (Naphthylpyrovalerone).

(N) Bromomethcathinone.

(O) Buphedrone (alpha-Methylaminobutyrophenone).

(P) Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).

(Q) Dimethylcathinone.

(R) Dimethylmethcathinone.

(S) Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).

(T) Pentedrone (alpha-Methylaminovalerophenone).

(U) MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).

(V) MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).

(W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).

(X) PPP (Pyrrolidinopropiophenone).

(Y) PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

(Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

(AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).

(BB) F-MABP (Fluoromethylaminobutyrophenone).

(CC) Me-EABP (Methylethylaminobutyrophenone).

(DD) PBP (Pyrrolidinobutyrophenone).

(EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).

(FF) Et-PBP (Ethylpyrrolidinobutyrophenone).

(GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

(HH) Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).

(II) 3,4-Methylenedioxy-N,N-diethylcathinone.

(JJ) 3,4-Methylenedioxy-N-acetylcathinone.

(KK) 3,4-Methylenedioxy-N-acetylmethcathinone.

(LL) 3,4-Methylenedioxy-N-acetylethcathinone.

(MM) Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

(NN) Methyl-alpha-methylaminohexanophenone.

(OO) N-Ethyl-N-methylcathinone.

(PP) PHP (Pyrrolidinohexanophenone).

(QQ) PV8 (Pyrrolidinoheptanophenone).

(RR) Chloromethcathinone.

(SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.

192. Substituted Phenethylamines. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure, without a beta-keto group, and without a benzyl group attached to the amine group, whether or not the compound is further modified with or without substitution on the phenyl ring to any extent with alkyl, alkylthio, nitro, alkoxy, thio, halide, fused alkylenedioxy, fused furan, fused benzofuran, fused dihydrofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha or beta position by any alkyl substituent, with or without substitution at the nitrogen

atom, and with or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).

b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).

d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).

e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).

f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).

g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).

h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).

i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

j. 2C-H (2,5-Dimethoxyphenethylamine).

k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

m. MDMA (3,4-Methylenedioxymethamphetamine).

n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).

o. MDA (3,4-Methylenedioxyamphetamine).

p. 2,5-Dimethoxyamphetamine.

q. Fluoroamphetamine.

r. Fluoromethamphetamine.

s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).

t. DOB (4-Bromo-2,5-dimethoxyamphetamine).

u. DOC (4-Chloro-2,5-dimethoxyamphetamine).

v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).

w. DOI (4-Iodo-2,5-dimethoxyamphetamine).

x. DOM (4-Methyl-2,5-dimethoxyamphetamine).

y. PMA (4-Methoxyamphetamine).

z. N-Ethylamphetamine.

aa. N-Hydroxy-3,4-methylenedioxyamphetamine.
bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
cc. PMMA (4-Methoxymethamphetamine).
dd. N,N-Dimethylamphetamine.
ee. 3,4,5-Trimethoxyamphetamine.
ff. 4-APB (4-(2-Aminopropyl)benzofuran).
gg. 5-APB (5-(2-Aminopropyl)benzofuran).
hh. 6-APB (6-(2-Aminopropyl)benzofuran).
ii. 7-APB (7-(2-Aminopropyl)benzofuran).
jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).
ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-dihydrobenzofuran),

which does not include phenethylamine, mescaline as described in subparagraph (1)(c)20., substituted cathinones as described in subparagraph (1)(c)191., N-Benzyl phenethylamine compounds as described in subparagraph (1)(c)193., or methamphetamine as described in subparagraph (2)(c)4.

193. N-Benzyl Phenethylamine Compounds. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States

Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including, but not limited to:

a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).
b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).
c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).
d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).
e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).
f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).
g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).
h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-

methylenedioxybenzyl)]phenethylamine).

i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylanamine).

j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylanamine).

k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylanamine).

l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

q. 25H-NBOH (2,5-Dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

r. 25H-NBF (2,5-Dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine),

which does not include substituted cathinones as described in subparagraph (1)(c)191.

194. Substituted Tryptamines. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and

Drug Administration, any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to:

a. Alpha-Ethyltryptamine.

b. Bufotenine.

c. DET (Diethyltryptamine).

d. DMT (Dimethyltryptamine).

e. MET (N-Methyl-N-ethyltryptamine).

f. DALT (N,N-Diallyltryptamine).

g. EiPT (N-Ethyl-N-isopropyltryptamine).

h. MiPT (N-Methyl-N-isopropyltryptamine).

i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).

j. 5-Hydroxy-N-methyltryptamine.

k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).

l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).

m. Methyltryptamine.

n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).

o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).

p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).

q. DiPT (N,N-Diisopropyltryptamine).

r. DPT (N,N-Dipropyltryptamine).

s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).

t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).

u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).

v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).

w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).

x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).

y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-isopropyltryptamine).

z. Methyl-alpha-ethyltryptamine.

aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

which does not include tryptamine, psilocyn as described in subparagraph (1)(c)34., or psilocybin as described in subparagraph (1)(c)33.

195. Substituted Phenylcyclohexylamines. Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a phenylcyclohexylamine structure, with or without any substitution on the phenyl ring, any substitution on the cyclohexyl ring, any replacement of the phenyl ring with a thiophenyl or benzothiophenyl ring, with or without substitution on the amine with alkyl, dialkyl, or alkoxy substitutients, inclusion of the nitrogen in a cyclic structure, or any combination of the above, including, but not limited to:

a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

b. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).

c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine)(Pyrrolidine analog of phencyclidine).

d. PCPr (Phenylcyclohexylpropylamine).

e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)(Thiophene analog of phencyclidine).

f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).

g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).

h. Methoxetamine.

i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).

j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).

k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).

l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).

m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).

n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).

o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).

p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).

q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).

r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that ~~which~~ contains any quantity of the following substances, including any of its salts, isomers, optical isomers, salts of their isomers, and salts of these optical isomers whenever the existence of such isomers and salts is possible within the specific chemical designation:

1. 1,4-Butanediol.

2. Gamma-butyrolactone (GBL).

3. Gamma-hydroxybutyric acid (GHB).

4. Methaqualone.

5. Mecloqualone.

(2) SCHEDULE II.—A substance in Schedule II has a high

potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmefene or isoquinoline alkaloids of opium, including, but not limited to the following:

a. Raw opium.

b. Opium extracts.

c. Opium fluid extracts.

d. Powdered opium.

e. Granulated opium.

f. Tincture of opium.

g. Codeine.

h. Ethylmorphine.

i. Etorphine hydrochloride.

j. Hydrocodone.

k. Hydromorphone.

l. Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

m. Metopon (methyldihydromorphinone).

n. Morphine.

o. Oxycodone.

p. Oxymorphone.

q. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances shall not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species *Papaver somniferum, L.*

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alfentanil.

2. Alphaprodine.

3. Anileridine.

4. Bezitramide.

5. Bulk propoxyphene (nondosage forms).

6. Carfentanil.

7. Dihydrocodeine.

8. Diphenoxylate.

9. Fentanyl.

10. Isomethadone.

11. Levomethorphan.

12. Levorphanol.
13. Metazocine.
14. Methadone.
15. Methadone-Intermediate,4-cyano-2-dimethylamino-4,4-diphenylbutane.
16. Moramide-Intermediate,2-methyl-3-morpholoino-1,1-diphenylpropane-carboxylic acid.
17. Nabilone.
18. Pethidine (meperidine).
19. Pethidine-Intermediate-A,4-cyano-1-methyl-4-phenylpiperidine.
20. Pethidine-Intermediate-B,ethyl-4-phenylpiperidine-4-carboxylate.
21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-4-carboxylic acid.
22. Phenazocine.
23. Phencyclidine.
24. 1-Phenylcyclohexylamine.
25. Piminodine.
26. 1-Piperidinocyclohexanecarbonitrile.
27. Racemethorphan.
28. Racemorphan.
29. Sufentanil.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, optical isomers, salts of their isomers, and salts of their optical isomers:

1. Amobarbital.

2. Amphetamine.
3. Glutethimide.
4. Methamphetamine.
5. Methylphenidate.
6. Pentobarbital.
7. Phenmetrazine.
8. Phenylacetone.
9. Secobarbital.

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, including thiobarbituric acid, or any salt of a derivative of barbituric acid or thiobarbituric acid, including, but not limited to, butabarbital and butalbital.
2. Benzphetamine.
3. Chlorhexadol.
4. Chlorphentermine.

5. Clortermine.
6. Lysergic acid.
7. Lysergic acid amide.
8. Methyprylon.
9. Phendimetrazine.
10. Sulfondiethylmethane.
11. Sulfonethylmethane.
12. Sulfonmethane.
13. Tiletamine and zolazepam or any salt thereof.

(b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined pursuant to s. 893.135(6).

(d) Anabolic steroids.

1. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth and includes:

a. Androsterone.
b. Androsterone acetate.
c. Boldenone.

d. Boldenone acetate.

e. Boldenone benzoate.

f. Boldenone undecylenate.

g. Chlorotestosterone (Clostebol) ~~(4-chlortestosterone)~~.

~~h. Clostebol.~~

h.~~i.~~ Dehydrochlormethyltestosterone.

i.~~j.~~ Dihydrotestosterone (Stanolone) ~~(4-dihydrotestosterone)~~.

j.~~k.~~ Drostanolone.

k.~~l.~~ Ethylestrenol.

l.~~m.~~ Fluoxymesterone.

m.~~n.~~ Formebulone (Formebolone).

n.~~o.~~ Mesterolone.

o.~~p.~~ Methandrostenolone (Methandienone).

p.~~q.~~ Methandranone.

q.~~r.~~ Methandriol.

~~s. Methandrostenolone.~~

r.~~t.~~ Methenolone.

s.~~u.~~ Methyltestosterone.

t.~~v.~~ Mibolerone.

u.~~w.~~ Nortestosterone (Nandrolone).

v.~~x.~~ Norethandrolone.

~~y. Nortestosterone.~~

w.~~z.~~ Nortestosterone decanoate.

x.~~aa.~~ Nortestosterone phenylpropionate.

y.~~bb.~~ Nortestosterone propionate.

z.~~cc.~~ Oxandrolone.

aa.~~dd.~~ Oxymesterone.

bb.~~ee.~~ Oxymetholone.

~~ff. Stanolone.~~

cc.~~gg.~~ Stanozolol.

dd.~~hh.~~ Testolactone.

ee.~~ii.~~ Testosterone.

ff.~~jj.~~ Testosterone acetate.

gg.~~kk.~~ Testosterone benzoate.

hh.~~ll.~~ Testosterone cypionate.

ii.~~mm.~~ Testosterone decanoate.

jj.~~nn.~~ Testosterone enanthate.

kk.~~oo.~~ Testosterone isocaproate.

ll.~~pp.~~ Testosterone oleate.

mm.~~qq.~~ Testosterone phenylpropionate.

nn.~~rr.~~ Testosterone propionate.

oo.~~ss.~~ Testosterone undecanoate.

pp.~~tt.~~ Trenbolone.

qq.~~uu.~~ Trenbolone acetate.

rr.~~vv.~~ Any salt, ester, or isomer of a drug or substance described or listed in this subparagraph if that salt, ester, or isomer promotes muscle growth.

2. The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for such administration. However, any person who prescribes, dispenses, or distributes such a steroid for human use is considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(e) Ketamine, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence

of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(f) Dronabinol (synthetic THC) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration.

(g) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under s. 505 of the Federal Food, Drug, and Cosmetic Act.

(4) SCHEDULE IV.—A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, are controlled in Schedule IV:

(a) Alprazolam.

(b) Barbital.

(c) Bromazepam.

(d) Camazepam.

(e) Cathine.

(f) Chloral betaine.

(g) Chloral hydrate.

(h) Chlordiazepoxide.

(i) Clobazam.

(j) Clonazepam.

(k) Clorazepate.

(l) Clotiazepam.

(m) Cloxazolam.

(n) Delorazepam.

(o) Propoxyphene (dosage forms).

(p) Diazepam.

(q) Diethylpropion.

(r) Estazolam.

(s) Ethchlorvynol.

(t) Ethinamate.

(u) Ethyl loflazepate.

(v) Fencamfamin.

(w) Fenfluramine.

(x) Fenproporex.

(y) Fludiazepam.

(z) Flurazepam.

(aa) Halazepam.

(bb) Haloxazolam.

(cc) Ketazolam.

(dd) Loprazolam.

(ee) Lorazepam.

(ff) Lormetazepam.

(gg) Mazindol.

(hh) Mebutamate.

(ii) Medazepam.

(jj) Mefenorex.

(kk) Meprobamate.

(ll) Methohexital.
(mm) Methylphenobarbital.
(nn) Midazolam.
(oo) Nimetazepam.
(pp) Nitrazepam.
(qq) Nordiazepam.
(rr) Oxazepam.
(ss) Oxazolam.
(tt) Paraldehyde.
(uu) Pemoline.
(vv) Pentazocine.
(ww) Phenobarbital.
(xx) Phentermine.
(yy) Pinazepam.
(zz) Pipradrol.
(aaa) Prazepam.
(bbb) Propylhexedrine, excluding any patent or proprietary preparation containing propylhexedrine, unless otherwise provided by federal law.
(ccc) Quazepam.
(ddd) Tetrazepam.
(eee) SPA[(-)-1 dimethylamino-1, 2 diphenylethane].
(fff) Temazepam.
(ggg) Triazolam.
(hhh) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
(iii) Butorphanol tartrate.
(jjj) Carisoprodol.

(5) SCHEDULE V.—A substance, compound, mixture, or preparation of a substance in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

(a) Substances controlled in Schedule V include any compound, mixture, or preparation containing any of the following limited quantities of controlled substances, which shall include one or more active medicinal ingredients which are not controlled substances in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the controlled substance alone:

1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

3. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts: Buprenorphine.

(c) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Section 3. Section 893.033, Florida Statutes, is amended to read:

893.033 Listed chemicals.—The chemicals listed in this section are included by whatever official, common, usual, chemical, or trade name designated.

(1) PRECURSOR CHEMICALS.—The term "listed precursor chemical" means a chemical that may be used in manufacturing a controlled substance in violation of this chapter and is critical to the creation of the controlled substance, and such term includes any salt, optical isomer, or salt of an optical isomer, whenever the existence of such salt, optical isomer, or salt of optical isomer is possible within the specific chemical designation. The following are "listed precursor chemicals":

(a) Anthranilic acid.

(b) Benzaldehyde.

(c) Benzyl cyanide.

(d) Chloroephedrine.

(e) Chloropseudoephedrine.

(f) Ephedrine.

(g) Ergonovine.

(h) Ergotamine.

(i) Ergocristine.

~~(i) Hydriodic acid.~~

(j) Ethylamine.

(k) Iodine tincture above 2.2 percent.

(l) ~~(k)~~ Isosafrole.

(m) ~~(l)~~ Methylamine.

(n) ~~(m)~~ 3, 4-Methylenedioxyphenyl-2-propanone.

(o) ~~(n)~~ N-Acetylanthranilic acid.

(p) ~~(o)~~ N-Ethylephedrine.

(q) ~~(p)~~ N-Ethylpseudoephedrine.

(r) ~~(q)~~ N-Methylephedrine.

(s) ~~(r)~~ N-Methylpseudoephedrine.

(t) ANPP (4-Anilino-N-phenethyl-4-piperidine).

(u) NPP (N-Phenethyl-4-piperidone).

(v) ~~(s)~~ Nitroethane.

(w) ~~(t)~~ Norpseudoephedrine.

(x) ~~(u)~~ Phenylacetic acid.

(y) ~~(v)~~ Phenylpropanolamine.

(z) ~~(w)~~ Piperidine.

(aa) ~~(x)~~ Piperonal.

(bb) ~~(y)~~ Propionic anhydride.

(cc) ~~(z)~~ Pseudoephedrine.

(dd) ~~(aa)~~ Safrole.

(2) ESSENTIAL CHEMICALS.—The term "listed essential chemical" means a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this chapter. The following are "listed essential chemicals":

(a) Acetic anhydride.

(b) Acetone.

(c) Ammonium salts, including, but not limited to, nitrate,

sulfate, phosphate, or chloride.

(d) ~~(c)~~ Anhydrous ammonia.

(e) Benzoquinone.

(f) ~~(d)~~ Benzyl chloride.

(g) ~~(e)~~ 2-Butanone.

(h) ~~(f)~~ Ethyl ether.

(i) Formic acid.

(j) ~~(g)~~ Hydrochloric acid ~~gas~~.

(k) ~~(h)~~ Hydriodic acid.

(l) ~~(i)~~ Iodine.

(m) Lithium.

(n) Organic solvents, including, but not limited to, Coleman Fuel, camping fuel, ether, toluene, or lighter fluid.

(o) Organic cosolvents, including, but not limited to, glycerol, propylene glycol, or polyethylene glycol.

(p) Potassium dichromate.

(q) ~~(j)~~ Potassium permanganate.

(r) Sodium.

(s) Sodium dichromate.

(t) Sodium borohydride.

(u) Sodium cyanoborohydride.

(v) Sodium hydroxide.

(w) Sulfuric acid.

~~(k) Toluene.~~

Section 4. Subsections (3) and (5) of section 893.0356, Florida Statutes, are amended, paragraph (j) is added to subsection (4) of that section, and paragraph (a) of subsection (2) of that section is republished, to read:

893.0356 Control of new substances; findings of fact; "controlled substance analog" defined.—

(2)(a) As used in this section, "controlled substance analog" means a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

1. Is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03; and

2. Has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03.

(3) As used in this section, the term "substantially similar," as the term applies to the chemical structure of a substance, means that the chemical structure of the substance compared to the structure of a controlled substance has a single difference in the structural formula that substitutes one atom or functional group for another, including, but not limited to, one halogen for another halogen, one hydrogen for a halogen or vice versa, an alkyl group added or deleted as a side chain to or from a molecule, or an alkyl group added or deleted from a side chain of a molecule. ~~"potential for abuse" in this section means that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being:~~

~~(a) Used in amounts that create a hazard to the user's health or the safety of the community;~~

~~(b) Diverted from legal channels and distributed through illegal channels; or~~

~~(c) Taken on the user's own initiative rather than on the basis of professional medical advice.~~

~~Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.~~

(4) The following factors shall be relevant to a finding that a substance is a controlled substance analog within the purview of this section:

(j) Comparisons to the accepted methods of marketing, distribution, and sales of the substance and that which the substance is purported to be, including, but not limited to:

1. The difference in price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;

2. The difference in how the substance is imported, manufactured, or distributed compared to how the substance it is purported to be or advertised as is normally imported, manufactured, or distributed;

3. The difference in the appearance of the substance in overall finished dosage form compared to the substance it is purported to be or advertised as normally appears in overall finished dosage form; and

4. The difference in how the substance is labeled for sale, packaged for sale, or the method of sale, including, but not limited to, the placement of the substance in an area commonly

viewable to the public for purchase consideration compared to how the substance it is purported to be or advertised as is normally labeled for sale, packaged for sale, or sold to the public.

(5) A controlled substance analog shall, for purposes of drug abuse prevention and control, be treated as the highest scheduled ~~a~~ controlled substance of which it is a controlled substance analog to in ~~Schedule I of~~ s. 893.03.

Section 5. Subsections (1), (4), and (6), and paragraph (d) of subsection (8) of section 893.13, Florida Statutes, are amended, and subsection (2), paragraphs (a) and (b) of subsection (5), and paragraph (a) of subsection (7) of that section are republished, to read:

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable

as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. As used in this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s.

402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any

other penalty prescribed by law.

(f) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(g) Except as authorized by this chapter, a person may not manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If a person violates this paragraph and:

1. The commission or attempted commission of the crime

occurs in a structure or conveyance where any child younger than 16 years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child younger than 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any

other penalty prescribed by law.

(2)(a) Except as authorized by this chapter and chapter 499, a person may not purchase, or possess with intent to purchase, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not purchase more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Except as authorized by this chapter, a person 18 years of age or older may not deliver any controlled substance to a person younger than 18 years of age, use or hire a person younger than 18 years of age as an agent or employee in the sale or delivery of such a substance, or use such person to assist in avoiding detection or apprehension for a violation of this

chapter. A person who violates this paragraph ~~provision~~ with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any other controlled substance, except as lawfully sold, manufactured, or delivered, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, and the person so convicted may not be placed on probation.

(5) A person may not bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. A person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

(2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6)(a) A person may not be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. A person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of 20 grams or less of cannabis, as defined in this chapter, ~~or 3 grams or less of a controlled substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173.,~~ the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. As used in this subsection, the term "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin~~, and a controlled substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173. does not include the substance in a powdered form~~.

(c) Except as provided in this chapter, a person may not possess more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable

as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the offense is possession of a controlled substance named or described in s. 893.03(5), the person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) ~~(d)~~ Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

(7)(a) A person may not:

1. Distribute or dispense a controlled substance in violation of this chapter.

2. Refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. Refuse entry into any premises for any inspection or refuse to allow any inspection authorized by this chapter.

4. Distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. Keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

6. Use to his or her own personal advantage, or reveal, any information obtained in enforcement of this chapter except in a

prosecution or administrative hearing for a violation of this chapter.

7. Possess a prescription form unless it has been signed by the practitioner whose name appears printed thereon and completed. This subparagraph does not apply if the person in possession of the form is the practitioner whose name appears printed thereon, an agent or employee of that practitioner, a pharmacist, or a supplier of prescription forms who is authorized by that practitioner to possess those forms.

8. Withhold information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person making the request has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the previous 30 days.

9. Acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. Affix any false or forged label to a package or receptacle containing a controlled substance.

11. Furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

12. Store anhydrous ammonia in a container that is not approved by the United States Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

13. With the intent to obtain a controlled substance or

combination of controlled substances that are not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtain or attempt to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subparagraph, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner or as described in subparagraph 8.

(8)

(d) Notwithstanding paragraph (c), if a prescribing practitioner has violated paragraph (a) and received $1,000 or more in payment for writing one or more prescriptions or, in the case of a prescription written for a controlled substance described in s. 893.135, has written one or more prescriptions for a quantity of a controlled substance which, individually or in the aggregate, meets the threshold for the offense of trafficking in a controlled substance under s. 893.135 ~~s. 893.15~~, the violation is reclassified as a felony of the second degree and ranked in level 4 of the Criminal Punishment Code.

Section 6. Paragraphs (g) and (l) of subsection (1) of section 893.135, Florida Statutes, are republished, paragraph (k) of that subsection is amended, and subsection (6) of that section is amended, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499

and notwithstanding the provisions of s. 893.13:

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except

pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in s. 893.03(1)(c):

a. (MDMA) 3,4-Methylenedioxymethamphetamine ~~(MDMA)~~;

b. DOB (4-Bromo-2,5-dimethoxyamphetamine);

c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);

d. 2,5-Dimethoxyamphetamine;

e. DOET (4-Ethyl-2,5-dimethoxyamphetamine) ~~2,5-Dimethoxy-4-ethylamphetamine (DOET)~~;

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. PMA (4-methoxyamphetamine);

j. PMMA (4-methoxymethamphetamine);

k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);

m. MDA (3,4-Methylenedioxyamphetamine);

n. N,N-dimethylamphetamine;

o. 3,4,5-Trimethoxyamphetamine;

p. Methylone (3,4-Methylenedioxymethcathinone);

q. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~; or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., commits a felony of the first degree, which felony shall be known as "trafficking in Phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $250,000.

3. A person who knowingly manufactures or brings into this

state 30 kilograms or more of any of the following substances described in s. 893.03(1)(c):

a. MDMA (3,4-Methylenedioxymethamphetamine) ~~(MDMA)~~;

b. 2C-B (4-Bromo-2,5-dimethoxyamphetamine);

c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);

d. 2,5-Dimethoxyamphetamine;

e. DOET (4-Ethyl-2,5-dimethoxyamphetamine) ~~2,5-Dimethoxy-4-ethylamphetamine (DOET)~~;

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. PMA (4-methoxyamphetamine);

j. PMMA (4-methoxymethamphetamine);

k. DOM (4-Methyl-2,5-dimethoxyamphetamine);

l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);

m. MDA (3,4-Methylenedioxyamphetamine);

n. N,N-dimethylamphetamine;

o. 3,4,5-Trimethoxyamphetamine;

p. Methylone (3,4-Methylenedioxymethcathinone);

q. MDPV (3,4-Methylenedioxypyrovalerone) ~~(MDPV)~~; or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony

under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(l)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable

as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(6) A mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a gelatin capsule, pill, or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

Section 7. Subsection (2) of section 893.138, Florida Statutes, is amended to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;

(b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a

felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(d) By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03; ~~or~~

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property; or

(f) On two or more occasions within a 6-month period, as the site of a violation of chapter 499,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 8. Subsections (6) and (12) of section 893.145, Florida Statutes, are amended to read:

893.145 "Drug paraphernalia" defined.—The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter or s. 877.111. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to:

(6) Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite,

dextrose, and lactose, used, intended for use, or designed for use in diluting ~~cutting~~ controlled substances; or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances, as described in s. 893.03, or substances described in s. 877.111(1) ~~cannabis, cocaine, hashish, hashish oil, or nitrous oxide~~ into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(b) Water pipes.

(c) Carburetion tubes and devices.

(d) Smoking and carburetion masks.

(e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

(f) Miniature cocaine spoons, and cocaine vials.

(g) Chamber pipes.

(h) Carburetor pipes.

(i) Electric pipes.

(j) Air-driven pipes.

(k) Chillums.

(l) Bongs.

(m) Ice pipes or chillers.

(n) A cartridge or canister, which means a small metal device used to contain nitrous oxide.

(o) A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.

(p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.

(q) A whip-it, which means a device that may be used to expel nitrous oxide.

(r) A tank.

(s) A balloon.

(t) A hose or tube.

(u) A 2-liter-type soda bottle.

(v) Duct tape.

Section 9. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband, ~~and~~ adulterated, or misbranded drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency

transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false

pretenses, fraud generally, and credit card crimes.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with

jurors and evidence.

Section 10. Paragraphs (c), (e), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended, and paragraphs (b), (d), and (h) of that subsection are republished, to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial

			purposes, or hazardous waste.
2482			
	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
2483			
	590.28(1)	3rd	Intentional burning of lands.
2484			
	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
2485			
	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
2486			
	806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
2487			
	810.061(2)	3rd	Impairing or impeding telephone or power to a

			dwelling; facilitating or furthering burglary.
2488			
	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
2489			
	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
2490			
	812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
2491			
	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2492			
	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
2493			
	817.481(3)(a)	3rd	Obtain credit or purchase with false,

			expired, counterfeit, etc., credit card, value over $300.
2494			
	817.52(3)	3rd	Failure to redeliver hired vehicle.
2495			
	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
2496			
	817.60(5)	3rd	Dealing in credit cards of another.
2497			
	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
2498			
	817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
2499			
	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2500			
	831.01	3rd	Forgery.
2501			

	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2502			
	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2503			
	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2504			
	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2505			
	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
2506			
	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
2507			
	843.08	3rd	False personation.
2508			
	893.13(2)(a)2.	3rd	Purchase of any s.

		893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of

		vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.

400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium

		collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.

812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or

		fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.

860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,

		(2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent

		material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or

		an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing

		or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
499.0051(2)	3rd	Failure to authenticate pedigree papers.
499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.

784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by

		throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.

790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.

810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device or

		reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key

		by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).

914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.

440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.

790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18

		years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.

817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of

		scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join

a criminal gang.

893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a),

(2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance

~~cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs)~~.

893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care

			profession without a license which results in serious bodily injury.
2691			
	458.327(1)	3rd	Practicing medicine without a license.
2692			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
2693			
	460.411(1)	3rd	Practicing chiropractic medicine without a license.
2694			
	461.012(1)	3rd	Practicing podiatric medicine without a license.
2695			
	462.17	3rd	Practicing naturopathy without a license.
2696			
	463.015(1)	3rd	Practicing optometry without a license.
2697			
	464.016(1)	3rd	Practicing nursing without a license.
2698			
	465.015(2)	3rd	Practicing pharmacy

			without a license.
2699			
	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
2700			
	467.201	3rd	Practicing midwifery without a license.
2701			
	468.366	3rd	Delivering respiratory care services without a license.
2702			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
2703			
	483.901(9)	3rd	Practicing medical physics without a license.
2704			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
2705			
	484.053	3rd	Dispensing hearing aids without a license.
2706			
	494.0018(2)	1st	Conviction of any violation of chapter 494

		in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).

782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators

		facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons

		violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but

		younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized

		emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.

812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.

817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.

827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.

847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b),

			(1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
2780			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
2781			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance ~~cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs)~~.
2782			
	893.135(1)(a)1.	1st	Trafficking in cannabis,

			more than 25 lbs., less than 2,000 lbs.
2783			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
2784			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
2785			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
2786			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2787			
	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
2788			
	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
2789			
	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than

		28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200

		grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.

782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.

787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.

794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.

800.04(4)(b)	2nd	Lewd or lascivious battery.
800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo

		valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(a)	2nd	Filing false lien or other unauthorized

		document; owner of the property incurs financial loss as a result of the false instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.

837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5

		kilograms, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.

893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions

to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

Section 11. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, paragraphs (a) and (g) of subsection (30) of section 39.01, Florida Statutes, are reenacted to read:

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

(30) "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following

factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or

2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

Section 12. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (5) of section 316.193, Florida Statutes, is reenacted to read:

316.193 Driving under the influence; penalties.—

(5) The court shall place all offenders convicted of violating this section on monthly reporting probation and shall require completion of a substance abuse course conducted by a DUI program licensed by the department under s. 322.292, which must include a psychosocial evaluation of the offender. If the DUI program refers the offender to an authorized substance abuse treatment provider for substance abuse treatment, in addition to any sentence or fine imposed under this section, completion of all such education, evaluation, and treatment is a condition of reporting probation. The offender shall assume reasonable costs for such education, evaluation, and treatment. The referral to treatment resulting from a psychosocial evaluation shall not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court, which shall have access to the DUI program's psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the

full cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of s. 893.03. If an offender referred to treatment under this subsection fails to report for or complete such treatment or fails to complete the DUI program substance abuse education course and evaluation, the DUI program shall notify the court and the department of the failure. Upon receipt of the notice, the department shall cancel the offender's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may temporarily reinstate the driving privilege on a restricted basis upon verification from the DUI program that the offender is currently participating in treatment and the DUI education course and evaluation requirement has been completed. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of treatment from the DUI program. The organization that conducts the substance abuse education and evaluation may not provide required substance abuse treatment unless a waiver has been granted to that organization by the department. A waiver may be granted only if the department determines, in accordance with its rules, that the service provider that conducts the substance abuse education and evaluation is the most appropriate service provider and is licensed under chapter 397 or is exempt from such licensure. A statistical referral report shall be submitted quarterly to the department by each organization authorized to provide services under this section.

Section 13. For the purpose of incorporating the amendment

made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 322.2616, Florida Statutes, is reenacted to read:

322.2616 Suspension of license; persons under 21 years of age; right to review.—

(2)

(c) When a driver subject to this section has a blood-alcohol or breath-alcohol level of 0.05 or higher, the suspension shall remain in effect until such time as the driver has completed a substance abuse course offered by a DUI program licensed by the department. The driver shall assume the reasonable costs for the substance abuse course. As part of the substance abuse course, the program shall conduct a substance abuse evaluation of the driver, and notify the parents or legal guardians of drivers under the age of 19 years of the results of the evaluation. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of s. 893.03. If a driver fails to complete the substance abuse education course and evaluation, the driver license shall not be reinstated by the department.

Section 14. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (5) of section 327.35, Florida Statutes, is reenacted to read:

327.35 Boating under the influence; penalties; "designated drivers."—

(5) In addition to any sentence or fine, the court shall place any offender convicted of violating this section on monthly reporting probation and shall require attendance at a

substance abuse course specified by the court; and the agency conducting the course may refer the offender to an authorized service provider for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. The offender shall assume reasonable costs for such education, evaluation, and treatment, with completion of all such education, evaluation, and treatment being a condition of reporting probation. Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation conducted by an agency appointed by the court and with access to the original evaluation. The offender shall bear the cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I-V of s. 893.03.

Section 15. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (11) of section 440.102, Florida Statutes, is reenacted to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK POSITIONS.—

(b) An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. 893.03. A special-risk employee who is participating in an employee

assistance program or drug rehabilitation program may not be allowed to continue to work in any special-risk or mandatory-testing position of the public employer, but may be assigned to a position other than a mandatory-testing position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

Section 16. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (2) of section 456.44, Florida Statutes, is reenacted to read:

456.44 Controlled substance prescribing.—

(2) REGISTRATION.—Effective January 1, 2012, a physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466 who prescribes any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:

(a) Designate himself or herself as a controlled substance prescribing practitioner on the physician's practitioner profile.

(b) Comply with the requirements of this section and applicable board rules.

Section 17. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (3) of section 458.326, Florida Statutes, is reenacted to read:

458.326 Intractable pain; authorized treatment.—

(3) Notwithstanding any other provision of law, a physician may prescribe or administer any controlled substance under

Schedules II-V, as provided for in s. 893.03, to a person for the treatment of intractable pain, provided the physician does so in accordance with that level of care, skill, and treatment recognized by a reasonably prudent physician under similar conditions and circumstances.

Section 18. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 458.3265, Florida Statutes, is reenacted to read:

458.3265 Pain-management clinics.—

(1) REGISTRATION.—

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.

2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction.

3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

Section 19. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 459.0137, Florida Statutes, is reenacted to read:

459.0137 Pain-management clinics.—

(1) REGISTRATION.—

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.

2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction.

3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

Section 20. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 463.0055, Florida Statutes, is reenacted to read:

463.0055 Administration and prescription of ocular pharmaceutical agents.—

(4) A certified optometrist shall be issued a prescriber number by the board. Any prescription written by a certified optometrist for an ocular pharmaceutical agent pursuant to this section shall have the prescriber number printed thereon. A certified optometrist may not administer or prescribe:

(a) A controlled substance listed in Schedule III, Schedule IV, or Schedule V of s. 893.03, except for an oral analgesic

placed on the formulary pursuant to this section for the relief of pain due to ocular conditions of the eye and its appendages.

Section 21. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 465.0276, Florida Statutes, is reenacted to read:

465.0276 Dispensing practitioner.—

(1)

(b) A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III as provided in s. 893.03. This paragraph does not apply to:

1. The dispensing of complimentary packages of medicinal drugs which are labeled as a drug sample or complimentary drug as defined in s. 499.028 to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect, as provided in subsection (5).

2. The dispensing of controlled substances in the health care system of the Department of Corrections.

3. The dispensing of a controlled substance listed in Schedule II or Schedule III in connection with the performance of a surgical procedure. The amount dispensed pursuant to the subparagraph may not exceed a 14-day supply. This exception does not allow for the dispensing of a controlled substance listed in Schedule II or Schedule III more than 14 days after the performance of the surgical procedure. For purposes of this subparagraph, the term "surgical procedure" means any procedure in any setting which involves, or reasonably should involve:

a. Perioperative medication and sedation that allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal or tactile stimulation and makes intra- and postoperative monitoring necessary; or

b. The use of general anesthesia or major conduction anesthesia and preoperative sedation.

4. The dispensing of a controlled substance listed in Schedule II or Schedule III pursuant to an approved clinical trial. For purposes of this subparagraph, the term "approved clinical trial" means a clinical research study or clinical investigation that, in whole or in part, is state or federally funded or is conducted under an investigational new drug application that is reviewed by the United States Food and Drug Administration.

5. The dispensing of methadone in a facility licensed under s. 397.427 where medication-assisted treatment for opiate addiction is provided.

6. The dispensing of a controlled substance listed in Schedule II or Schedule III to a patient of a facility licensed under part IV of chapter 400.

Section 22. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, subsection (14) and paragraph (a) of subsection (15) of section 499.0121, Florida Statutes, are reenacted to read:

499.0121 Storage and handling of prescription drugs; recordkeeping.—The department shall adopt rules to implement this section as necessary to protect the public health, safety,

and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

(14) DISTRIBUTION REPORTING.—Each prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, retail pharmacy drug wholesale distributor, manufacturer, or repackager that engages in the wholesale distribution of controlled substances as defined in s. 893.02 shall submit a report to the department of its receipts and distributions of controlled substances listed in Schedule II, Schedule III, Schedule IV, or Schedule V as provided in s. 893.03. Wholesale distributor facilities located within this state shall report all transactions involving controlled substances, and wholesale distributor facilities located outside this state shall report all distributions to entities located in this state. If the prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, retail pharmacy drug wholesale distributor, manufacturer, or repackager does not have any controlled substance distributions for the month, a report shall be sent indicating that no distributions occurred in the period. The report shall be submitted monthly by the 20th of the next month, in the electronic format used for controlled substance reporting to the Automation of Reports and Consolidated Orders System division of the federal Drug Enforcement Administration. Submission of electronic data must be made in a secured Internet environment that allows for manual or automated transmission. Upon successful transmission, an acknowledgment page must be displayed to confirm receipt. The

report must contain the following information:

(a) The federal Drug Enforcement Administration registration number of the wholesale distributing location.

(b) The federal Drug Enforcement Administration registration number of the entity to which the drugs are distributed or from which the drugs are received.

(c) The transaction code that indicates the type of transaction.

(d) The National Drug Code identifier of the product and the quantity distributed or received.

(e) The Drug Enforcement Administration Form 222 number or Controlled Substance Ordering System Identifier on all Schedule II transactions.

(f) The date of the transaction.

The department must share the reported data with the Department of Law Enforcement and local law enforcement agencies upon request and must monitor purchasing to identify purchasing levels that are inconsistent with the purchasing entity's clinical needs. The Department of Law Enforcement shall investigate purchases at levels that are inconsistent with the purchasing entity's clinical needs to determine whether violations of chapter 893 have occurred.

(15) DUE DILIGENCE OF PURCHASERS.—

(a) Each prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, and retail pharmacy drug wholesale distributor must establish and maintain policies and procedures to credential physicians licensed under chapter 458, chapter 459, chapter 461, or chapter 466 and

pharmacies that purchase or otherwise receive from the wholesale distributor controlled substances listed in Schedule II or Schedule III as provided in s. 893.03. The prescription drug wholesale distributor, out-of-state prescription drug wholesale distributor, or retail pharmacy drug wholesale distributor shall maintain records of such credentialing and make the records available to the department upon request. Such credentialing must, at a minimum, include:

1. A determination of the clinical nature of the receiving entity, including any specialty practice area.

2. A review of the receiving entity's history of Schedule II and Schedule III controlled substance purchasing from the wholesale distributor.

3. A determination that the receiving entity's Schedule II and Schedule III controlled substance purchasing history, if any, is consistent with and reasonable for that entity's clinical business needs.

Section 23. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 499.029, Florida Statutes, is reenacted to read:

499.029 Cancer Drug Donation Program.—

(3) As used in this section:

(a) "Cancer drug" means a prescription drug that has been approved under s. 505 of the federal Food, Drug, and Cosmetic Act and is used to treat cancer or its side effects or is used to treat the side effects of a prescription drug used to treat cancer or its side effects. "Cancer drug" does not include a substance listed in Schedule II, Schedule III, Schedule IV, or

Schedule V of s. 893.03.

Section 24. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, subsections (1) and (4) of section 782.04, Florida Statutes, are reenacted to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

a. Trafficking offense prohibited by s. 893.135(1),

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

i. Aggravated abuse of an elderly person or disabled adult,

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

p. Resisting an officer with violence to his or her person,

q. Aggravated fleeing or eluding with serious bodily injury

or death,

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism; or

3. Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

(a) Trafficking offense prohibited by s. 893.135(1),

(b) Arson,

(c) Sexual battery,

(d) Robbery,

(e) Burglary,

(f) Kidnapping,

(g) Escape,

(h) Aggravated child abuse,

(i) Aggravated abuse of an elderly person or disabled adult,

(j) Aircraft piracy,

(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,

(l) Unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

(m) Carjacking,

(n) Home-invasion robbery,

(o) Aggravated stalking,

(p) Murder of another human being,

(q) Aggravated fleeing or eluding with serious bodily injury or death,

(r) Resisting an officer with violence to his or her person, or

(s) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 25. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 787.06, Florida Statutes, is reenacted to read:

787.06 Human trafficking.—

(2) As used in this section, the term:

(a) "Coercion" means:

1. Using or threatening to use physical force against any person;

2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;

3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;

5. Causing or threatening to cause financial harm to any person;

6. Enticing or luring any person by fraud or deceit; or

7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.

Section 26. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (1) of section 817.563, Florida Statutes, is reenacted to read:

817.563 Controlled substance named or described in s. 893.03; sale of substance in lieu thereof.—It is unlawful for any person to agree, consent, or in any manner offer to

unlawfully sell to any person a controlled substance named or described in s. 893.03 and then sell to such person any other substance in lieu of such controlled substance. Any person who violates this section with respect to:

(1) A controlled substance named or described in s. 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 27. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, section 831.31, Florida Statutes, is reenacted to read:

831.31 Counterfeit controlled substance; sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver.—

(1) It is unlawful for any person to sell, manufacture, or deliver, or to possess with intent to sell, manufacture, or deliver, a counterfeit controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance named or described in s. 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(5) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For purposes of this section, "counterfeit controlled substance" means:

(a) A controlled substance named or described in s. 893.03

which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or number, or any likeness thereof, of a manufacturer other than the person who in fact manufactured the controlled substance; or

(b) Any substance which is falsely identified as a controlled substance named or described in s. 893.03.

Section 28. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, section 893.0301, Florida Statutes, is reenacted to read:

893.0301 Death resulting from apparent drug overdose; reporting requirements.—If a person dies of an apparent drug overdose:

(1) A law enforcement agency shall prepare a report identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 which is found on or near the deceased or among the deceased's possessions. The report must identify the person who prescribed the controlled substance, if known or ascertainable. Thereafter, the law enforcement agency shall submit a copy of the report to the medical examiner.

(2) A medical examiner who is preparing a report pursuant to s. 406.11 shall include in the report information identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 that was found in, on, or near the deceased or among the deceased's possessions.

Section 29. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a

reference thereto, paragraph (a) of subsection (7) of section 893.035, Florida Statutes, is reenacted to read:

893.035 Control of new substances; findings of fact; delegation of authority to Attorney General to control substances by rule.—

(7)(a) If the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03 on a temporary basis is necessary to avoid an imminent hazard to the public safety, he or she may by rule and without regard to the requirements of subsection (5) relating to the Department of Health and the Department of Law Enforcement schedule such substance in Schedule I if the substance is not listed in any other schedule of s. 893.03. The Attorney General shall be required to consider, with respect to his or her finding of imminent hazard to the public safety, only those factors set forth in paragraphs (3)(a) and (4)(d), (e), and (f), including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

Section 30. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (1) of section 893.05, Florida Statutes, is reenacted to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the same to be administered by a licensed nurse or an intern practitioner under his or her

direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under the veterinarian's direction and supervision only. A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 31. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 893.055, Florida Statutes, is reenacted to read:

893.055 Prescription drug monitoring program.—

(1) As used in this section, the term:

(b) "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, or Schedule IV in s. 893.03.

Section 32. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, paragraph (b) of subsection (5) of section 893.07, Florida Statutes, is reenacted to read:

893.07 Records.—

(5) Each person described in subsection (1) shall:

(b) In the event of the discovery of the theft or significant loss of controlled substances, report such theft or significant loss to the sheriff of that county within 24 hours after discovery. A person who fails to report a theft or significant loss of a substance listed in s. 893.03(3), (4), or (5) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the second degree, punishable

as provided in s. 775.082 or s. 775.083. A person who fails to report a theft or significant loss of a substance listed in s. 893.03(2) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 33. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, paragraphs (b), (c), and (d) of subsection (2) of section 893.12, Florida Statutes, are reenacted to read:

893.12 Contraband; seizure, forfeiture, sale.—

(2)

(b) All real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is used, or intended to be used, in any manner or part, to commit or to facilitate the commission of, or which real property is acquired with proceeds obtained as a result of, a violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(c) All moneys, negotiable instruments, securities, and other things of value furnished or intended to be furnished by any person in exchange for a controlled substance described in s. 893.03(1) or (2) or a listed chemical in violation of any

provision of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of this chapter or which are acquired with proceeds obtained in violation of any provision of this chapter may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

(d) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, or which are acquired with proceeds obtained, in violation of any provision of this chapter related to a controlled substance described in s. 893.03(1) or (2) or a listed chemical may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

Section 34. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in a reference thereto, subsection (2) of section 944.474, Florida Statutes, is reenacted to read:

944.474 Legislative intent; employee wellness program; drug and alcohol testing.—

(2) An employee of the department may not test positive for illegal use of controlled substances. An employee of the department may not be under the influence of alcohol while on duty. In order to ensure that these prohibitions are adhered to by all employees of the department and notwithstanding s.

112.0455, the department may develop a program for the drug testing of all job applicants and for the random drug testing of all employees. The department may randomly evaluate employees for the contemporaneous use or influence of alcohol through the use of alcohol tests and observation methods. Notwithstanding s. 112.0455, the department may develop a program for the reasonable suspicion drug testing of employees who are in mandatory-testing positions, as defined in s. 440.102(1)(o), or special risk positions, as defined in s. 112.0455(5), for the controlled substances listed in s. 893.03(3)(d). The reasonable suspicion drug testing authorized by this subsection shall be conducted in accordance with s. 112.0455, but may also include testing upon reasonable suspicion based on violent acts or violent behavior of an employee who is on or off duty. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 that are necessary to administer this subsection.

Section 35. For the purpose of incorporating the amendment made by this act to section 893.033, Florida Statutes, in a reference thereto, subsection (4) of section 893.149, Florida Statutes, is reenacted to read:

893.149 Unlawful possession of listed chemical.—

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, shall be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the

listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

Section 36. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 397.451, Florida Statutes, is reenacted to read:

397.451 Background checks of service provider personnel.—

(4) EXEMPTIONS FROM DISQUALIFICATION.—

(b) Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of substance abuse impaired adolescents, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this paragraph.

Section 37. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (2) of section 435.07, Florida Statutes, is reenacted to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(2) Persons employed, or applicants for employment, by

treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.

Section 38. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (2) of section 772.12, Florida Statutes, is reenacted to read:

772.12 Drug Dealer Liability Act.—

(2) A person, including any governmental entity, has a cause of action for threefold the actual damages sustained and is entitled to minimum damages in the amount of $1,000 and reasonable attorney's fees and court costs in the trial and appellate courts, if the person proves by the greater weight of the evidence that:

(a) The person was injured because of the defendant's actions that resulted in the defendant's conviction for:

1. A violation of s. 893.13, except for a violation of s. 893.13(2)(a) or (b), (3), (5), (6)(a), (b), or (c), (7); or

2. A violation of s. 893.135; and

(b) The person was not injured by reason of his or her participation in the same act or transaction that resulted in the defendant's conviction for any offense described in subparagraph (a)1.

Section 39. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section

775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or

b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a

controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Section 40. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (3) of section 810.02, Florida Statutes, is reenacted to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be

committed therein is theft of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 41. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a

reference thereto, subsection (2) of section 812.014, Florida Statutes, is reenacted to read:

812.014 Theft.—

(2)(a)1. If the property stolen is valued at $100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

2. If the property stolen is cargo valued at $50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. If the offender commits any grand theft and:

a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or

b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of $1,000,

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment,

valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at $300 or more, that is taken from an authorized emergency vehicle, as defined in s. 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in the officer's official business. However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense

committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such

offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $100 or more, but less than $300, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at $100 or more, but less than $300, the

offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

Section 42. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (1) of section 831.311, Florida Statutes, is reenacted to read:

831.311 Unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances.—

(1) It is unlawful for any person having the intent to injure or defraud any person or to facilitate any violation of s. 893.13 to sell, manufacture, alter, deliver, utter, or possess with intent to injure or defraud any person, or to facilitate any violation of s. 893.13, any counterfeit-resistant prescription blanks for controlled substances, the form and content of which are adopted by rule of the Department of Health pursuant to s. 893.065.

Section 43. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, subsection (1) of section 893.1351, Florida Statutes, is reenacted to read:

893.1351 Ownership, lease, rental, or possession for trafficking in or manufacturing a controlled substance.—

(1) A person may not own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a

controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 44. For the purpose of incorporating the amendment made by this act to section 893.138, Florida Statutes, in a reference thereto, subsection (3) of section 893.138, Florida Statutes, is reenacted to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;

(b) Section 810.02, relating to burglary;

(c) Section 812.014, relating to dealing in theft;

(d) Section 812.131, relating to robbery by sudden snatching; or

(e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 45. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, section 893.15, Florida Statutes, is

reenacted to read:

893.15 Rehabilitation.—Any person who violates s. 893.13(6)(a) or (b) relating to possession may, in the discretion of the trial judge, be required to participate in a substance abuse services program approved or regulated by the Department of Children and Families pursuant to the provisions of chapter 397, provided the director of such program approves the placement of the defendant in such program. Such required participation shall be imposed in addition to any penalty or probation otherwise prescribed by law. However, the total time of such penalty, probation, and program participation shall not exceed the maximum length of sentence possible for the offense.

Section 46. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, section 903.133, Florida Statutes, is reenacted to read:

903.133 Bail on appeal; prohibited for certain felony convictions.—Notwithstanding the provisions of s. 903.132, no person adjudged guilty of a felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a violation of s. 794.011(2) or (3), shall be admitted to bail pending review either by posttrial motion or appeal.

Section 47. For the purpose of incorporating the amendment made by this act to section 893.13, Florida Statutes, in a reference thereto, paragraph (l) of subsection (1) of section 921.187, Florida Statutes, is reenacted to read:

921.187 Disposition and sentencing; alternatives; restitution.—

(1) The alternatives provided in this section for the disposition of criminal cases shall be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation. If the offender does not receive a state prison sentence, the court may:

(l)1. Require the offender who violates any criminal provision of chapter 893 to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21 and 938.23.

2. Require the offender who violates any provision of s. 893.13 to pay an additional assessment in an amount of $100, pursuant to ss. 938.055 and 943.361.

Section 48. For the purpose of incorporating the amendment made by this act to section 893.145, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 893.12, Florida Statutes, is reenacted to read:

893.12 Contraband; seizure, forfeiture, sale.—

(2)(a) Any vessel, vehicle, aircraft, or drug paraphernalia as defined in s. 893.145 which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

Section 49. For the purpose of incorporating the amendment made by this act to section 893.145, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 893.147, Florida Statutes, is reenacted to read:

893.147 Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug

paraphernalia.—

(6) RETAIL SALE OF DRUG PARAPHERNALIA.—

(a) It is unlawful for a person to knowingly and willfully sell or offer for sale at retail any drug paraphernalia described in s. 893.145(12)(a)-(c) or (g)-(m), other than a pipe that is primarily made of briar, meerschaum, clay, or corn cob.

Section 50. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is reenacted to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; or

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related

transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 51. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, is reenacted to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

(3) As used in this section, the term:

(g) "Specified unlawful activity" means "racketeering activity" as defined in s. 895.02.

Section 52. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 896.101, Florida Statutes, is reenacted to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

(2) As used in this section, the term:

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 53. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, section 905.34, Florida Statutes, is

reenacted to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(1) Bribery, burglary, carjacking, home-invasion robbery, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, and robbery;

(2) Crimes involving narcotic or other dangerous drugs;

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

(4) Any violation of the provisions of the Florida Anti-Fencing Act;

(5) Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

(6) Any violation of the provisions of chapter 815;

(7) Any crime involving, or resulting in, fraud or deceit upon any person;

(8) Any violation of s. 847.0135, s. 847.0137, or s. 847.0138 relating to computer pornography and child exploitation prevention, or any offense related to a violation of s.

847.0135, s. 847.0137, or s. 847.0138 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

(9) Any criminal violation of part I of chapter 499;

(10) Any criminal violation of s. 409.920 or s. 409.9201;

(11) Any criminal violation of the Florida Money Laundering Act;

(12) Any criminal violation of the Florida Securities and Investor Protection Act; or

(13) Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 54. This act shall take effect July 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 Appropriations Committee	
BILL:	CS/SB 1534 (310862)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Senator Simmons
SUBJECT:	Housing Assistance
DATE:	February 25, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.	Gusky	Miller	ATD	**Recommend: Fav/CS**
3.	Gusky	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1534 makes numerous changes to laws related to housing assistance, including housing for individuals and families who are homeless. The bill:

- Amends the State Apartment Incentive Loan (SAIL) Program to:
  - Change how funds are made available to better reflect projected needs and demand for affordable housing for the specified tenant groups and counties based on population; and
  - Require rent controls on rental units financed through the SAIL program based on applicable income limitations established by the Florida Housing Finance Corporation (FHFC).
- Amends provisions relating to the State Office on Homelessness and the Challenge Grant Program that provides grants to lead agencies of homeless assistance continuums of care, including:
  - Requiring that expenditures of leveraged funds or resources are permitted only for eligible activities committed on one project which have not been used as leverage or match for another project;
  - Removing the requirement that award levels for Challenge Grants be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas; and
  - Requiring any funding distributed to the lead agencies be based on overall performance and achievement of specified objectives, including the number of persons or households that are no longer homeless, the rate of recidivism to homelessness, and the number of persons who obtain gainful employment.

- Expresses legislative intent to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of support provided in the permanent supportive housing model and requires Rapid ReHousing to be added to the components of a continuum of care plan.
- Amends the State Housing Initiatives Partnership (SHIP) Programs to:
  - Provide exceptions to the restriction on counties and eligible municipalities related to expenditures of State Housing Initiatives Partnership (SHIP) Program distributions for ongoing rent subsidies;
  - Provide that up to 25 percent of the SHIP Program funds made available in a county or municipality may be reserved for rental housing;
  - Clarify monitoring requirements when SHIP program funds are used for rental housing developments;
  - Revise the composition of local Affordable Housing Advisory Committees; and
  - Extend the time period for the FHFC to review local housing assistance plans from 30 to 45 days.
- Authorizes the FHFC to:
  - Forgive indebtedness for SAIL loans for small properties serving homeless persons in certain underserved counties or rural areas and make loans exceeding 25 percent of the cost for those projects; and
  - Ban developers for misrepresentations or fraud related to a program application from participating in FHFC's programs for any appropriate time period, including a permanent ban, rather than for only up to two years.
- Expresses legislative intent to encourage the state entity that administers funds from the National Housing Trust Fund to propose an allocation plan that includes strategies to reduce homelessness and the risk of homelessness in Florida.
- Makes several changes to laws relating to housing authorities, which include:
  - Prohibiting housing authorities, regardless of when they were created, from applying to the federal government to acquire through the exercise of the power of eminent domain any projects, units, or vouchers of another established housing authority;
  - Exempting housing authorities from the provisions of s. 215.425, F.S., which addresses extra compensation, bonuses and severance pay; and
  - Removing the requirement that housing authorities must submit a copy of the biennial financial reports submitted to the federal government to the governing body and the Auditor General.

The bill has an indeterminate, but expected insignificant, fiscal impact on state and local governments. While programs that provide services to homeless persons may receive additional resources, the private sector impact of the bill is indeterminate.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Housing for Individuals with Lower Incomes

In 1986[1] the Legislature found that:

- Decent, safe, and sanitary housing for individuals of very low income, low income, and moderate income is a critical need in the state;
- New and rehabilitated housing must be provided at a cost affordable to such persons in order to alleviate this critical need;
- Special programs are needed to stimulate private enterprise to build and rehabilitate housing in order to help eradicate slum conditions and provide housing for very-low-income persons, low-income persons, and moderate-income persons as a matter of public purpose; and
- Public-private partnerships are an essential means of bringing together resources to provide affordable housing.[2]

As a result of these findings, the Legislature determined that legislation was urgently needed to alleviate crucial problems related to housing shortages for individuals with very low,[3] low[4] and moderate[5] incomes. In 1986, part VI of ch. 420, F.S., was titled as the "Florida Affordable Care Act of 1986"[6] and programs and funding mechanisms were created over the years to help remedy low-income housing issues.

State Apartment Incentive Loan (SAIL) Program

The SAIL program was created by the Legislature in 1988[7] for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.[8]

The SAIL program provides low-interest loans on a competitive basis to affordable housing developers each year. This funding often serves to bridge the gap between the primary financing and the total cost of the development. SAIL program funds are available to individuals, public

[1] Chapter 86-192, Laws of Fla.
[2] Section 420.6015, F.S.
[3] "Very-low-income persons" means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.
[4] "Low-income persons" means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.
[5] "Moderate-income persons" means one or more persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the household is located, whichever is greater.
[6] Chapter 86-192, Laws of Fla., Part VI, was subsequently renamed the "Affordable Housing Planning and Community Assistance Act." Chapter 92-317, Laws of Fla.
[7] Chapter 88-376, Laws of Florida.
[8] Section 420.5087, F.S.

entities, and not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very-low-income individuals and families.[9]

The Florida Housing Finance Corporation (FHFC) has the authority to make SAIL loans that exceed 25 percent of the project cost under the following circumstances:

- When the developer is a not-for-profit organization or a public entity that is able to secure grants, donations of land, or contributions from other sources;
- When the project sets aside at least 80 percent of the total units over the life of the loan for farmworkers, commercial fishing workers, homeless persons, or persons with special needs; and
- When the project serves extremely-low-income persons.[10]

The FHFC has the authority to forgive indebtedness for a share of a SAIL loan attributable to the units in a project reserved for extremely-low-income persons.[11]

SAIL program funds must be distributed in a manner that meets the need and demand for very-low-income housing throughout the state. The need and demand must be determined by using the most recent statewide low-income rental housing market studies available. The SAIL program funding is reserved for use within statutorily defined counties (large, medium, and small)[12] and for properties providing units for specified tenant groups. The University of Florida's Shimberg Center for Housing Studies prepares the rental housing market study for the Florida Finance Housing Corporation (FHFC).[13] Below is a comparison of the actual need based on the 2013 Rental Market Study compared to the current statutory reservation requirements for the specified tenant groups.

Specified Tenant Group	**Actual Percentage of Total Households in Need**	**Current Statutory Reservation Requirements[14]**
Commercial fishing workers and farmworker households	4 percent	Not less than 10 percent
Persons who are homeless	10 percent	Not less than 5 percent
Persons with special needs	13 percent	Not more than 10 percent
Elder persons	20 percent	Not less than 10 percent
Families	53 percent	Not less than 10 percent

During the first 6 months of loan or loan guarantee availability, SAIL program funds are required to be reserved for use by sponsors who provide the required housing set-aside for specified tenant groups. Under current law, the statutory requirement to reserve funds for the commercial

[9] Florida Housing Finance Corporation, *State Apartment Incentive Loan Program*, available at: http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0173 (last visited Jan. 21, 2016).
[10] Section 420.507(22)(a) and (b), F.S.
[11] Section 420.507(22)(c), F.S.
[12] Section 420.5087(1), F.S., provides that funds must be allocated to the following categories of counties: counties that have a population of 845,000 or more ("large"); counties that have a population of more than 100,000 but less than 825,000 ("medium"); and counties that have a population of 100,000 or less ("small").
[13] Shimberg Center for Housing Studies, University of Florida, *2013 Rental Market Study: Affordable Rental Housing Needs*, April 7, 2013.
[14] Section 420.5087, F.S.

fishing worker and farmworker household tenant group significantly exceeds the actual housing need for this group. The current statutory "cap" on the reservation for the persons with special needs (no more than 10 percent) does not allow the program to address the actual housing need for this group (13 percent) during the first 6 months of loan or loan guarantee availability.

Funding for the SAIL Program is subject to an annual appropriation.[15]

State Office on Homelessness

In 2001, the Florida Legislature created the State Office on Homelessness (office) within the Department of Children and Families (DCF) to serve as a central point of contact within state government on homelessness. The office is responsible for coordinating resources and programs across all levels of government, and with private providers that serve the homeless. It also manages targeted state grants to support the implementation of local homeless service continuum of care plans.[16]

Council on Homelessness

The inter-agency Council on Homelessness (council) was also created in 2001. The 17-member council is charged with developing recommendations on how to reduce homelessness statewide and advising the State Office on Homelessness.[17]

Local Coalitions for the Homeless

The DCF is required to establish local coalitions to plan, network, coordinate, and monitor the delivery of services to the homeless.[18] Groups and organizations provided the opportunity to participate in such coalitions include:

- Organizations and agencies providing mental health and substance abuse services;
- County health departments and community health centers;
- Organizations and agencies providing food, shelter, or other services targeted to the homeless;
- Local law enforcement agencies;
- Local workforce development boards;
- County and municipal governments;
- Local public housing authorities;
- Local school districts;
- Local organizations and agencies serving specific subgroups of the homeless population such as veterans, victims of domestic violence, persons with HIV/AIDS, and runaway youth; and
- Local community-based care alliances.[19]

[15] *Id*.
[16] Section 420.622(1), F.S.
[17] *Id*.
[18] Section 420.623, F.S.
[19] *Id*.

Continuum of Care

A local coalition serves as the lead agency for the local homeless assistance continuum of care (CoC).[20] A local CoC is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.[21] The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions.[22]

The DCF interacts with the state's 28 CoCs through the office, which serves as the state's central point of contact on homelessness. The office has designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The office has made these designations in consultation with the local homeless coalitions and the Florida offices of the federal Department of Housing and Urban Development (HUD).

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD. The plan also makes the community eligible to compete for the state's Challenge Grants and Homeless Housing Assistance Grants.[23]

Challenge Grants

The office is authorized to accept and administer moneys appropriated to it to provide Challenge Grants annually to designated lead agencies of homeless assistance CoCs.[24] The office may award grants in an amount of up to $500,000 per lead agency.[25] A lead agency may spend a maximum of 8 percent of its funding on administrative costs. To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated area.[26]

Pursuant to s. 420.624, F.S., the DCF provides funding for local homeless assistance CoC, which is a framework for providing an array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk of becoming homeless. There is no statutorily identified funding source for this program.[27]

Pursuant to s. 420.606(3), F.S., the Department of Economic Opportunity (DEO) provides training and technical assistance to staff of state and local government entities, community-based organizations, and persons forming such organizations for the purpose of developing new housing and rehabilitating existing housing that is affordable for very-low-income persons, low-

[20] *Id*.
[21] Section 420.624, F.S.
[22] *Id*.
[23] Florida Department of Children and Families, *Lead Agencies*, available at: http://www.myflfamilies.com/service-programs/homelessness/lead-agencies (last visited Jan. 21, 2016).
[24] "Section 420.621(1), F.S., defines "Continuum of Care" to mean the community components needed to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximum self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness."
[25] Section 420.622, F.S.
[26] *Id*.
[27] Department of Economic Opportunity, *House Bill 379 Analysis*, (January 22, 2015).

income persons, and moderate-income persons. There is no statutorily identified funding source for this program.[28]

Homeless Housing Assistance Grants

The office is authorized to accept and administer moneys appropriated to it to provide Homeless Housing Assistance Grants annually to lead agencies of local homeless assistance CoC. The grants may not exceed $750,000 per project and an applicant may spend a maximum of 5 percent of its funding on administrative costs. The grant funds must be used to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. The funds available for the eligible grant activities may be appropriated, received from donations, gifts, or from any public or private source.[29]

Rapid ReHousing

Rapid ReHousing is a model for providing housing for individuals and families who are homeless. The model places a priority on moving a family or individual experiencing homelessness into permanent housing as quickly as possible, hopefully within 30 days of a client becoming homeless and entering a program. While originally focused primarily on people experiencing homelessness due to short-term financial crises, programs across the country have begun to assist individuals and families who are traditionally perceived as more difficult to serve. This includes people with limited or no income, survivors of domestic violence, and those with substance abuse issues. Although the duration of financial assistance may vary, many programs find that, on average, 4 to 6 months of financial assistance is sufficient to stably re-house a household.[30]

Since federal funding for rapid re-housing first became available in 2008, a number of communities, including Palm Beach County, Florida, that prioritized rapid re-housing as a response to homelessness have seen decreases in the amount of time that households spend homeless, less recidivism, and improved permanent housing outcomes relative to other available interventions.[31]

There are three core components of rapid re-housing: housing identification, rent and move-in assistance (financial), and rapid re-housing case management and services. While all three components are present and available in effective rapid re-housing programs, there are instances where the components are provided by different entities or agencies, or where a household does not utilize all three.[32] A key element of rapid re-housing is the "Housing First" philosophy, which offers housing without preconditions such as employment, income, lack of a criminal background, or sobriety. If issues such as these need to be addressed, the household can address them most effectively once they are in housing.[33]

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[28] *Id*.
[29] *Id*.
[30] National Alliance to End Homelessness, *Rapid Re-Housing: A History and Core Components*, (2014), available at: http://www.endhomelessness.org/library/entry/rapid-re-housing-a-history-and-core-components (last visited Jan. 21, 2016).
[31] *Id*.
[32] *Id*.
[33] The Florida Legislature expressed the intent to encourage homeless continuums of care to adopt the Housing First approach to ending homelessness for individuals and families in 2009. See s. 420.6275, F.S.

State Housing Initiatives Partnership (SHIP) Program

The SHIP Program was created in 1992[34] to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to serve very-low, low, and moderate-income families and is administered by the FHFC. A dedicated funding source for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. The SHIP Program is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program under an established formula.[35] A county or eligible municipality seeking funds from the SHIP Program must adopt an ordinance that:

- Creates a local housing assistance trust fund;
- Adopts a local housing assistance plan to be implemented through a local housing partnership;
- Designates responsibility for administering the local housing assistance plan; and
- Creates an affordable housing advisory committee.[36]

National Housing Trust Fund

In July 2008, the federal Housing and Economic Recovery Act was signed into law,[37] establishing a National Housing Trust Fund (NHTF or trust fund), among other housing-related provisions. Although the National Housing Trust Fund has been established, a permanent funding stream has not been secured.[38]

The goal of the trust fund is to provide ongoing, permanent, dedicated, and sufficient sources of revenue to build, rehabilitate, and preserve 1.5 million units of housing for the lowest-income families, including people experiencing homelessness, over the next 10 years. The NHTF particularly aims to increase and preserve the supply of rental housing that is affordable for extremely[39] and very-low-income households, and increase homeownership opportunities for those households. To prevent funding for the NHTF from competing with existing HUD programs, this revenue is expected to be generated separately from the current federal appropriations process.[40]

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[34] Chapter 92-317, Laws of Fla.
[35] Section 420.9073, F.S.
[36] Section 420.9072, F.S.
[37] Public Law 110-289.
[38] The National Alliance to End Homelessness. *National Housing Trust Fund*, available at: http://www.endhomelessness.org/pages/national_housing_trust_fund (last visited Jan. 21, 2016).
[39] "Extremely-low-income persons" means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 30 percent of the median annual adjusted gross income for households within the state. The FHFC may adjust this amount annually by rule to provide that in lower-income counties, extremely-low income may exceed 30 percent of area median income and that in higher-income counties, extremely-low income may be less than 30 percent of area median income.
[40] The National Alliance to End Homelessness, *National Housing Trust Fund*, available at: http://www.endhomelessness.org/pages/national_housing_trust_fund (last visited Jan. 21, 2016).

Housing Authorities and Eminent Domain

A housing authority has the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes.[41] Property already devoted to a public use may be acquired in like manner, so long as no real property belonging to the city, the county, the state, or any political subdivision is acquired without its consent.

III. Effect of Proposed Changes:

Section 1 amends s. 420.503(36), F.S., the definition of "service provider" for purposes of Part V of ch. 420, F.S., relating to the Florida Housing Finance Corporation (FHFC), to update the bid threshold for contracts executed between the FHFC and service providers to conform to the purchasing categories established in s. 287.017, F.S.

Section 2 amends s. 420.507, F.S., relating to the powers of the FHFC, to give the FHFC the authority to forgive indebtedness for SAIL loans provided to create permanent rental housing units for homeless persons or persons who are residing in time-limited transitional housing or institutions as a result of a lack of permanent, affordable housing. Such developments must be:

- In counties or rural areas of counties that do not have existing units set aside for homeless persons;
- Supported by a local homeless assistance continuum of care (CoC) developed under s. 420.624, F.S.;
- Be developed by nonprofit applicants;
- Be small properties as defined by FHFC rules; and
- Be a project in the local housing assistance CoC plan recognized by the State Office on Homelessness.

The bill also authorizes the FHFC to make loans exceeding 25 percent of the cost for the projects described above.

The bill amends s. 420.057(35), F.S., to ban developers who have made material misrepresentations or engaged in fraudulent actions related to a program application from participating in FHFC's programs for any appropriate time period, including a permanent ban, rather than only up to two years.

Section 3 amends s. 420.5087, F.S., relating to the State Apartment Incentive Loan (SAIL) Program, to change how funds are made available through a competitive solicitation process to better reflect projected needs and demand for affordable housing for the specified tenant groups and counties throughout the state based on population. At least 10 percent of SAIL program funds, as calculated on an annual basis, must be made available to each of the three categories of counties based on population: 825,000 or more persons; more than 100,000 but less than 825,000 persons; and 100,000 or less persons. Funds made available within each notice of fund availability may not be less than:

- 10 percent each for families, homeless persons, persons with special needs, and elderly persons; and
- 5 percent for commercial fishing workers and farmworkers.

[41] Section 421.12, F.S. An authority may exercise the power of eminent domain pursuant to ch. 73 and ch. 74, F.S.

The bill requires that at least 10 percent of SAIL Program funds available must be reserved for four of the five tenant groups. At least 5 percent of available SAIL Program funds must be reserved for the commercial fishing workers and farmworkers tenant group.

Section 420.5087, F.S., is further amended to require rent controls on rental units financed through the SAIL program. Rent controls must be set at the income set-aside levels committed to by the project's sponsor at the applicable income limitations established by the Florida Housing Finance Corporation (FHFC) for federal low-income housing tax credits.

The bill also deletes s. 420.5087(10), F.S., which expires July 1, 2016.

Section 4 amends s. 420.511, F.S., relating to the FHFC's strategic business plan, long-range program plan, annual report, and audited financial statements, to remove language that requires the FHFC's business plan and annual report to recognize different fiscal periods. This language is no longer necessary as it is well established that the FHFC's fiscal year is the calendar year.

Section 5 amends s. 420.622, F.S., relating to the State Office on Homelessness (office) and the Council on Homelessness (council), to:

- Require the office, in coordination with other entities, to produce an inventory of state homeless programs instead of the currently required program and financial plan.
- Require the office to establish a task force to make recommendations related to the implementation of a statewide Homeless Management Information System (HMIS). The task force must make its recommendations to the council by December 31, 2016.
- Require, rather than allow, the office and the council to accept and administer moneys appropriated for annual Challenge Grants.
- Remove the requirement that award levels for Challenge Grants be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas.
- Provide requirements related to expenditures of leveraged funds or resources. These funds may only be used for eligible activities committed on one project which have not been used as leverage or match for any other project.
- Require the office, in conjunction with the council, to establish performance measures and specific objectives to evaluate the performance and outcomes of lead agencies that receive grant funds.
- Require any funding distributed to the lead agencies be based on overall performance and achievement of specified objectives, including the number of persons or households that are no longer homeless, the rate of recidivism to homelessness, and the number of persons who obtain gainful employment.

Section 6 amends s. 420.624, F.S., relating to the local homeless assistance continuum of care (CoC), to require the office and the council to include a methodology for assessing performance and outcomes and data reporting in the CoC plan that communities seeking to implement a local homeless assistance continuum of care are encouraged to develop. The bill also requires Rapid ReHousing to be added to the components of a continuum of care plan.

Section 7 creates s. 420.6265, F.S., relating to Rapid ReHousing, to express legislative intent to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of support provided in the permanent supportive housing model.[42] The bill also statutorily prescribes the Rapid Rehousing Methodology.

Section 8 amends s. 420.9071(26), F.S., relating to the definition of "rent subsidies," to allow initial assistance for tenants, such as grants or loans for security and utility deposits.

Section 9 amends s. 420.9072, F.S., relating to the State Housing Initiatives Partnership (SHIP) Program, to provide that a county or an eligible municipality may not spend its portion of the local housing distribution to provide ongoing rent subsidies with the exception of:

- Security and utility deposit assistance.
- Eviction prevention not to exceed rent for 6 months.
- A rent subsidy program for very-low-income households that meet specified qualifications.

The section is further amended to extend the time period for the FHFC to review local housing assistance plans from 30 to 45 days after receipt.

Section 10 amends s. 420.9075, F.S., relating to local housing assistance plans and partnerships, to:

- Add "Lead agencies of local homeless assistance continuums of care" as part of the partnership process to participate in the SHIP Program.
- Clarify monitoring requirements when local governments use SHIP program funds to assist rental housing developments.
- Add language to encourage eligible municipalities to develop a strategy for providing program funds to reduce homelessness.
- Provide that up to 25 percent of the SHIP Program funds made available in a county or municipality may be reserved for rental housing.
- Require a county or eligible municipality to include a description of efforts to reduce homelessness in the annual report that must be submitted to the FHFC.

Section 11 amends s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies and committees, to revise the composition of local Affordable Housing Advisory Committees. Currently, the committees must have 11 members with each member representing a specific stakeholder group (for example, one citizen actively engaged in affordable housing residential construction, one citizen actively engaged as a for-profit affordable housing provider, etc.). The bill reduces the number of committee members to eight and requires the committee to consist of one representative from at least six of the 11 specified stakeholder categories. The

[42] Permanent supportive housing is for individuals who need long-term housing assistance with supportive services in order to stay housed. Individuals and families living in supportive housing often have long histories of homelessness and face persistent obstacles to maintaining housing, such as a serious mental illness, a substance use disorder, or a chronic medical problem. Many supportive housing tenants face more than one of these serious conditions. *See* United States Interagency Council on Homelessness, *Permanent Supportive Housing*, available at https://www.usich.gov/solutions/housing/permanent-supportive-housing (last visited Jan. 21, 2016).

section is further amended to delete language no longer needed to address issues with committee representation and to correct cross references.

Section 12 creates s. 420.9089, F.S., relating to the NHTF, to express legislative intent to encourage the state entity that administers funds from the NHTF to propose an allocation plan that includes strategies to reduce homelessness and the risk of homelessness in the state. The Florida Housing Finance Corporation (FHFC) is the state entity designated by the Governor to administer funds made available to the state from the National Housing Trust Fund (NHTF). The U.S. Department of Housing and Urban Development (HUD) will officially release the NHTF grant amount for each state in April 2016.[43] Each state must adopt an Allocation Plan that has been developed through a public process involving citizen participation, and may include strategies to address homelessness.[44] The funding must be used primarily to assist households with specified incomes and 90 percent of the funds must be used to preserve and increase the supply of rental housing.[45]

Section 13 amends s. 421.04, F.S., to prohibit housing authorities, regardless of when they were created, from applying to the federal government to acquire through the power of eminent domain any projects, units, or vouchers of another established housing authority, irrespective of each housing authority's area of operation.

Section 14 amends s. 421.05, F.S., to provide that housing authorities are exempt from the provisions of s. 215.425, F.S. Section 215.425, F.S., addresses extra compensation, bonuses, and severance pay.

Section 15 amends s. 421.091, F.S., to exempt housing authorities from reporting requirements of s. 218.32, F.S., which requires each local government to submit an annual financial report for the previous fiscal year to the Department of Financial Services. Housing authorities would still be responsible for submitting a biennial financial accounting and audit, made by a certified public accountant, to the federal government, but would not be required to provide that report to the governing body of the housing authority or the Auditor General.

Section 16 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[43] Florida Housing Finance Corporation, *SB 1534 Summary/Comment* (Jan. 13, 2016)(on file with the Senate Appropriations Subcommittee on Transportation, Tourism and Economic Development).
[44] *Id.*
[45] *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

While programs that serve homeless persons may receive additional resources, the private sector impact of PCS/SB 1534 is indeterminate.

C. Government Sector Impact:

The bill has an indeterminate, but expected to be insignificant, fiscal impact on state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 420.503, 420.507, 420.5087, 420.511, 420.622, 420.624, 420.9071, 420.9072, 420.9075, 420.9076, 421.04, 421.05, and 421.091.

This bill creates the following sections of the Florida Statutes: 420.6265 and 420.9089.

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 Transportation, Tourism, and Economic Development on February 11, 2016:
The committee substitute:

- Amends the State Apartment Incentive Loan (SAIL) Program to:
  - Change how funds are made available to better reflect projected needs and demand for affordable housing for counties based on population; and

- Require rent controls on rental units financed through the SAIL program based on applicable income limitations established by the Florida Housing Finance Corporation (FHFC).

- Amends the State Housing Initiatives Partnership (SHIP) Programs to:
  - Clarify monitoring requirements when local governments use SHIP program funds to assist rental housing developments;
  - Extend the time period for the FHFC to review local housing assistance plans from 30 to 45 days; and
  - Revises the composition of local Affordable Housing Advisory Committees.
- Authorizes the FHFC to:
  - Forgive indebtedness for SAIL for small properties serving homeless persons in certain underserved counties or rural areas and make loans exceeding 25 percent of the cost for those projects; and
  - Ban developers for misrepresentations or fraud related to a program application from participating in FHFC's programs for any appropriate time period, including a permanent ban, rather than for only up to two years.

B. Amendments:

None.

855434

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 193 - 755
and insert:
(50) To reserve a minimum of 5 percent of its annual appropriation from the State Housing Trust Fund for housing projects designed and constructed to serve persons who have a disabling condition, as defined in s. 420.0004, with first priority given to projects serving persons who have a developmental disability, as defined in s. 393.063. Funding


855434

shall be provided as forgivable loans through a competitive solicitation. Private nonprofit organizations whose primary mission includes serving persons with a disabling condition shall be eligible for these funds. In evaluating proposals for these funds, the corporation shall consider the extent to which funds from local and other sources will be used by the applicant to leverage the funds provided under this section; employment opportunities and supports that will be available to residents of the proposed housing; a plan for residents to effectively access community-based services, resources, and amenities; and partnerships with other supportive services agencies.

Section 3. Subsections (1) and (3), paragraphs (b), (f), and (k) of subsection (6), and subsection (10) of section 420.5087, Florida Statutes, are amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(1) Program funds shall be made available through a competitive solicitation process ~~distributed over successive 3-year periods~~ in a manner that meets the need and demand for very-low-income housing throughout the state. That need and demand must be determined by using the most recent statewide low-income rental housing market studies conducted every 3 years ~~available at the beginning of each 3-year period~~. However, at least 10 percent of the program funds, as calculated on an annual basis, ~~distributed during a 3-year period~~ must be made


855434

available ~~allocated~~ to each of the following categories of counties~~,~~ as determined by using the population statistics published in the most recent edition of the Florida Statistical Abstract:

(a) Counties that have a population of 825,000 or more.

(b) Counties that have a population of more than 100,000 but less than 825,000.

(c) Counties that have a population of 100,000 or less.

Any increase in funding required to reach the 10-percent minimum shall be taken from the county category that has the largest portion of the funding ~~allocation~~. The corporation shall adopt rules that ~~which~~ establish an equitable process for distributing any portion of the 10 percent of program funds made available ~~allocated~~ to the county categories specified in this subsection which remains unallocated ~~at the end of a 3-year period~~. Counties that have a population of 100,000 or less shall be given preference under these rules.

(3) During the first 6 months of loan or loan guarantee availability, program funds shall be made available ~~reserved~~ for use by sponsors who provide the housing set-aside required in subsection (2) for the tenant groups designated in this subsection. The ~~reservation of~~ funds made available to each of these groups shall be determined using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability required by paragraph (6)(b). The ~~reservation of~~ funds made available within each notice of fund availability to the tenant groups in paragraphs (b)-(e) ~~(a), (b), and (c)~~ may not be less than 10

855434

percent of the funds available at that time. Any increase in funding required to reach the required ~~10-percent~~ minimum must be taken from the tenant group that would receive ~~has~~ the largest percentage of available funds in accordance with the study ~~reservation~~. The ~~reservation of~~ funds made available within each notice of fund availability to the tenant group in paragraph (a) ~~(c)~~ may not be less than 5 percent of the funds available at that time. ~~The reservation of funds within each notice of fund availability to the tenant group in paragraph (d) may not be more than 10 percent of the funds available at that time.~~ The tenant groups are:

(a) Commercial fishing workers and farmworkers;

(b) Families;

(c) Persons who are homeless;

(d) Persons with special needs; and

(e) Elderly persons. Ten percent of the amount made available ~~reserved~~ for the elderly shall ~~be reserved to~~ provide loans to sponsors of housing for the elderly for the purpose of making building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. Such a loan may not exceed $750,000 per housing community for the elderly. In order to receive the loan, the sponsor of the housing community must make a commitment to match at least 5 percent of the loan amount to pay the cost of such repair or improvement. The corporation shall establish the rate of interest on the loan, which may not exceed 3 percent, and the term of the loan, which may not exceed 15 years; however, if the lien of the corporation’s encumbrance

is subordinate to the lien of another mortgagee, then the term may be made coterminous with the longest term of the superior lien. The term of the loan shall be based on a credit analysis of the applicant. The corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations, as defined in s. 420.0004(5), where the project has provided affordable housing to the elderly for 15 years or more. The corporation shall establish, by rule, the procedure and criteria for receiving, evaluating, and competitively ranking all applications for loans under this paragraph. A loan application must include evidence of the first mortgagee's having reviewed and approved the sponsor's intent to apply for a loan. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(b) The corporation shall publish a notice of fund availability in a publication of general circulation throughout the state. Such notice shall be published at least 60 days prior to the application deadline and shall provide notice of the availability ~~temporary reservations~~ of funds established in subsection (3).

(f) The review committee established by corporation rule pursuant to this subsection shall make recommendations to the

board of directors of the corporation regarding program participation under the State Apartment Incentive Loan Program. The corporation board shall make the final decisions regarding which applicants shall become program participants based on the scores received in the competitive process, further review of applications, and the recommendations of the review committee. The corporation board shall approve or reject applications for loans and shall determine the tentative loan amount available to each applicant selected for participation in the program. The actual loan amount shall be determined pursuant to rule adopted pursuant to s. 420.507(22)(i) ~~s. 420.507(22)(h)~~.

(k) Rent controls shall ~~not be allowed on any project except as required in conjunction with the issuance of tax-exempt bonds or federal low-income housing tax credits and except when the sponsor has committed to set aside units for extremely-low-income persons, in which case rents shall~~ be set ~~restricted~~ at the income set-aside levels committed to by the sponsor at the ~~level~~ applicable income limitations established by the corporation for federal low-income tax credits.

~~(10)(a) Notwithstanding subsection (3), for the 2015-2016 fiscal year, the reservation of funds for the tenant groups within each notice of fund availability shall be:~~

~~1. Not less than 10 percent of the funds available at that time for the following tenant groups:~~

~~a. Families;~~

~~b. Persons who are homeless;~~

~~c. Persons with special needs; and~~

~~d. Elderly persons.~~

~~2. Not less than 5 percent of the funds available at that~~


855434

~~time for the commercial fishing workers and farmworkers tenant group.~~

~~(b) This subsection expires July 1, 2016.~~

Section 4. Subsection (5) of section 420.511, Florida Statutes, is amended to read:

420.511 Strategic business plan; long-range program plan; annual report; audited financial statements.—

(5) The Auditor General shall conduct an operational audit of the accounts and records of the corporation and provide a written report on the audit to the President of the Senate and the Speaker of the House of Representatives by December 1, 2016. ~~Both the corporation's business plan and annual report must recognize the different fiscal periods under which the corporation, the state, the Federal Government, and local governments operate.~~

Section 5. Paragraphs (a) and (b) of subsection (3) and subsections (4), (5), and (6) of section 420.622, Florida Statutes, are amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(3) The State Office on Homelessness, pursuant to the policies set by the council and subject to the availability of funding, shall:

(a) Coordinate among state, local, and private agencies and providers to produce a statewide consolidated <u>inventory</u> ~~program and financial plan~~ for the state's entire system of homeless programs which incorporates regionally developed plans. Such programs include, but are not limited to:

1. Programs authorized under the Stewart B. McKinney

Homeless Assistance Act of 1987, 42 U.S.C. ss. 11371 et seq., and carried out under funds awarded to this state; and

2. Programs, components thereof, or activities that assist persons who are homeless or at risk for homelessness.

(b) Collect, maintain, and make available information concerning persons who are homeless or at risk for homelessness, including demographics information, current services and resources available, the cost and availability of services and programs, and the met and unmet needs of this population. All entities that receive state funding must provide access to all data they maintain in summary form, with no individual identifying information, to assist the council in providing this information. The State Office on Homelessness, in consultation with the designated lead agencies for a local homeless continuum of care and with the Council on Homelessness, shall develop the system and process of data collection from all lead agencies for the purpose of analyzing trends and assessing impacts in the statewide homeless delivery system. Any statewide homelessness survey and database system must comply with all state and federal statutory and regulatory confidentiality requirements ~~The council shall explore the potential of creating a statewide Management Information System (MIS), encouraging the future participation of any bodies that are receiving awards or grants from the state, if such a system were adopted, enacted, and accepted by the state~~.

(4) The State Office on Homelessness, with the concurrence of the Council on Homelessness, shall ~~may~~ accept and administer moneys appropriated to it to provide annual "Challenge Grants" to lead agencies of homeless assistance continuums of care


855434

designated by the State Office on Homelessness pursuant to s. 420.624. The department shall establish varying levels of grant awards up to $500,000 per lead agency. ~~Award levels shall be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas.~~ The department, in consultation with the Council on Homelessness, shall specify a grant award level in the notice of the solicitation of grant applications.

(a) To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated catchment area. The continuum of care plan must implement a coordinated assessment or central intake system to screen, assess, and refer persons seeking assistance to the appropriate service provider. The lead agency shall also document the commitment of local government or ~~and~~ private organizations to provide matching funds or in-kind support in an amount equal to the grant requested. Expenditures of leveraged funds or resources, including third-party cash or in-kind contributions, are authorized only for eligible activities committed on one project which have not been used as leverage or match for any other project or program and must be certified through a written commitment.

(b) Preference must be given to those lead agencies that have demonstrated the ability of their continuum of care to provide quality services to homeless persons and the ability to leverage federal homeless-assistance funding under the Stewart B. McKinney Act with local government funding or ~~and~~ private funding for the provision of services to homeless persons.

(c) Preference must be given to lead agencies in catchment


855434

areas with the greatest need for the provision of housing and services to the homeless, relative to the population of the catchment area.

(d) The grant may be used to fund any of the housing, program, or service needs included in the local homeless assistance continuum of care plan. The lead agency may allocate the grant to programs, services, or housing providers that implement the local homeless assistance continuum care plan. The lead agency may provide subgrants to a local agency to implement programs or services or provide housing identified for funding in the lead agency's application to the department. A lead agency may spend a maximum of 8 percent of its funding on administrative costs.

(e) The lead agency shall submit a final report to the department documenting the outcomes achieved by the grant in enabling persons who are homeless to return to permanent housing thereby ending such person's episode of homelessness.

(5) The State Office on Homelessness, with the concurrence of the Council on Homelessness, may administer moneys appropriated to it to provide homeless housing assistance grants annually to lead agencies for local homeless assistance continuum of care, as recognized by the State Office on Homelessness, to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. These moneys shall consist of any sums that the state may appropriate, as well as money received from donations, gifts, bequests, or otherwise from any public or private source, which are intended to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.


855434

(a) Grant applicants shall be ranked competitively. Preference must be given to applicants who leverage additional private funds and public funds, particularly federal funds designated for the acquisition, construction, or rehabilitation of transitional or permanent housing for homeless persons; who acquire, build, or rehabilitate the greatest number of units; or ~~and~~ who acquire, build, or rehabilitate in catchment areas having the greatest need for housing for the homeless relative to the population of the catchment area.

(b) Funding for any particular project may not exceed $750,000.

(c) Projects must reserve, for a minimum of 10 years, the number of units acquired, constructed, or rehabilitated through homeless housing assistance grant funding to serve persons who are homeless at the time they assume tenancy.

(d) No more than two grants may be awarded annually in any given local homeless assistance continuum of care catchment area.

(e) A project may not be funded which is not included in the local homeless assistance continuum of care plan, as recognized by the State Office on Homelessness, for the catchment area in which the project is located.

(f) The maximum percentage of funds that the State Office on Homelessness and each applicant may spend on administrative costs is 5 percent.

(6) The State Office on Homelessness, in conjunction with the Council on Homelessness, shall establish performance measures and specific objectives by which it may ~~to~~ evaluate the ~~effective~~ performance and outcomes of lead agencies that receive

grant funds. Any funding through the State Office on Homelessness shall be distributed to lead agencies based on their overall performance and their achievement of specified objectives. Each lead agency for which grants are made under this section shall provide the State Office on Homelessness a thorough evaluation of the effectiveness of the program in achieving its stated purpose. In evaluating the performance of the lead agencies, the State Office on Homelessness shall base its criteria upon the program objectives, goals, and priorities that were set forth by the lead agencies in their proposals for funding. Such criteria may include, but are not ~~be~~ limited to, the number of persons or households that are no longer homeless, the rate of recidivism to homelessness, and the number of persons who obtain gainful employment ~~homeless individuals provided shelter, food, counseling, and job training~~.

Section 6. Subsections (3), (7), and (8) of section 420.624, Florida Statutes, are amended to read:

420.624 Local homeless assistance continuum of care.—

(3) Communities or regions seeking to implement a local homeless assistance continuum of care are encouraged to develop and annually update a written plan that includes a vision for the continuum of care, an assessment of the supply of and demand for housing and services for the homeless population, and specific strategies and processes for providing the components of the continuum of care. The State Office on Homelessness, in conjunction with the Council on Homelessness, shall include in the plan a methodology for assessing performance and outcomes. The State Office on Homelessness shall supply a standardized format for written plans, including the reporting of data.

(7) The components of a continuum of care plan should include:

(a) Outreach, intake, and assessment procedures in order to identify the service and housing needs of an individual or family and to link them with appropriate housing, services, resources, and opportunities;

(b) Emergency shelter, in order to provide a safe, decent alternative to living in the streets;

(c) Transitional housing;

(d) Supportive services, designed to assist with the development of the skills necessary to secure and retain permanent housing;

(e) Permanent supportive housing;

(f) Rapid ReHousing, as specified in s. 420.6265;

(g) ~~(f)~~ Permanent housing;

(h) ~~(g)~~ Linkages and referral mechanisms among all components to facilitate the movement of individuals and families toward permanent housing and self-sufficiency;

(i) ~~(h)~~ Services and resources to prevent housed persons from becoming or returning to homelessness; and

(j) ~~(i)~~ An ongoing planning mechanism to address the needs of all subgroups of the homeless population, including but not limited to:

1. Single adult males;

2. Single adult females;

3. Families with children;

4. Families with no children;

5. Unaccompanied children and youth;

6. Elderly persons;


855434

7. Persons with drug or alcohol addictions;

8. Persons with mental illness;

9. Persons with dual or multiple physical or mental disorders;

10. Victims of domestic violence; and

11. Persons living with HIV/AIDS.

(8) Continuum of care plans must promote participation by all interested individuals and organizations and may not exclude individuals and organizations on the basis of race, color, national origin, sex, handicap, familial status, or religion. Faith-based organizations must be encouraged to participate. To the extent possible, these components must ~~should~~ be coordinated and integrated with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Assistance Program, and services funded through the Mental Health and Substance Abuse Block Grant, the Workforce Investment Act, and the welfare-to-work grant program.

Section 7. Section 420.6265, Florida Statutes, is created to read:

420.6265 Rapid ReHousing.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that Rapid ReHousing is a strategy of using temporary financial assistance and case management to quickly move an individual or family out of homelessness and into permanent housing.

(b) The Legislature also finds that public and private solutions to homelessness in the past have focused on providing


855434

individuals and families who are experiencing homelessness with emergency shelter, transitional housing, or a combination of both. While emergency shelter and transitional housing programs may provide critical access to services for individuals and families in crisis, the programs often fail to address their long-term needs.

(c) The Legislature further finds that most households become homeless as a result of a financial crisis that prevents individuals and families from paying rent or a domestic conflict that results in one member being ejected or leaving without resources or a plan for housing.

(d) The Legislature further finds that Rapid ReHousing is an alternative approach to the current system of emergency shelter or transitional housing which tends to reduce the length of time a person is homeless and has proven to be cost effective.

(e) It is therefore the intent of the Legislature to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of supports provided in the permanent supportive housing model.

(2) RAPID REHOUSING METHODOLOGY.—

(a) The Rapid ReHousing response to homelessness differs from traditional approaches to addressing homelessness by focusing on each individual’s or family’s barriers to housing. By using this approach, communities can significantly reduce the amount of time that individuals and families are homeless and prevent further episodes of homelessness.

(b) In Rapid ReHousing, an individual or family is

identified as being homeless, temporary assistance is provided to allow the individual or family to obtain permanent housing as quickly as possible, and, if needed, assistance is provided to allow the individual or family to retain housing.

(c) The objective of Rapid ReHousing is to provide assistance for as short a term as possible so that the individual or family receiving assistance does not develop a dependency on the assistance.

Section 8. Subsections (16), (25), and (26) of section 420.9071, Florida Statutes, are amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(16) "Local housing incentive strategies" means local regulatory reform or incentive programs to encourage or facilitate affordable housing production, which include at a minimum, assurance that permits ~~as defined in s. 163.3164~~ for affordable housing projects are expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.; an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption; and a schedule for implementing the incentive strategies. Local housing incentive strategies may also include other regulatory reforms, such as those enumerated in s. 420.9076 or those recommended by the affordable housing advisory committee in its triennial evaluation of the implementation of affordable housing incentives, and adopted by the local governing body.

(25) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture


855434

provisions of its local housing assistance plan pursuant to s. 420.9075(5)(j) ~~s. 420.9075(5)(h)~~ from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award.

(26) "Rent subsidies" means ongoing monthly rental assistance. ~~The term does not include initial assistance to tenants, such as grants or loans for security and utility deposits.~~

Section 9. Paragraph (b) of subsection (3) and subsection (7) of section 420.9072, Florida Statutes, are amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(3)

(b) Within 45 ~~30~~ days after receiving a plan, the review committee shall review the plan and either approve it or identify inconsistencies with the requirements of the program. The corporation shall assist a local government in revising its plan if it initially proves to be inconsistent with program requirements. A plan that is revised by the local government to achieve consistency with program requirements shall be reviewed within 45 ~~30~~ days after submission. The deadlines for submitting original and revised plans shall be established by corporation


855434

rule; however, the corporation shall not require submission of a new local housing assistance plan to implement amendments to this act until the currently effective plan expires.

(7)(a) A county or an eligible municipality must expend its portion of the local housing distribution only to implement a local housing assistance plan or as provided in this subsection. ~~A county or an eligible municipality may not expend its portion of the local housing distribution to provide rent subsidies; however, this does not prohibit the use of funds for security and utility deposit assistance.~~

(b) A county or an eligible municipality may not expend its portion of the local housing distribution to provide ongoing rent subsidies, except for:

1. Security and utility deposit assistance.

2. Eviction prevention not to exceed 6 months' rent.

3. A rent subsidy program for very-low-income households with at least one adult who is a person with special needs as defined in s. 420.0004 or homeless as defined in s. 420.621. The period of rental assistance may not exceed 12 months for any eligible household.

Section 10. Paragraph (a) of subsection (2) of section 420.9075, Florida Statutes, is amended, paragraphs (f) and (g) are added to subsection (3) of that section, paragraph (e) of subsection (4) of that section is amended, present paragraph (b) of subsection (5) of that section is redesignated as paragraph (c), present paragraphs (c) through (l) of that subsection are redesignated as paragraphs (e) through (n), respectively, new paragraphs (b) and (d) are added to that subsection, present paragraph (l) of that subsection is amended, paragraph (i) is

added to subsection (10) of that section, and paragraph (b) of subsection (13) of that section is amended, to read:

420.9075 Local housing assistance plans; partnerships.—

(2)(a) Each county and each eligible municipality participating in the State Housing Initiatives Partnership Program shall encourage the involvement of appropriate public sector and private sector entities as partners in order to combine resources to reduce housing costs for the targeted population. This partnership process should involve:

1. Lending institutions.

2. Housing builders and developers.

3. Nonprofit and other community-based housing and service organizations.

4. Providers of professional services relating to affordable housing.

5. Advocates for low-income persons, including, but not limited to, homeless people, the elderly, and migrant farmworkers.

6. Real estate professionals.

7. Other persons or entities who can assist in providing housing or related support services.

8. Lead agencies of local homeless assistance continuums of care.

(3)

(f) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan which provides program funds for reducing homelessness.

(g) Local governments may create regional partnerships

855434

across jurisdictional boundaries through the pooling of appropriated funds to address homeless housing needs identified in local housing assistance plans.

(4) Each local housing assistance plan is governed by the following criteria and administrative procedures:

(e) The staff or entity that has administrative authority for implementing a local housing assistance plan assisting rental developments shall annually monitor and determine tenant eligibility or, to the extent another governmental entity or corporation program provides periodic ~~the same~~ monitoring and determination, a municipality, county, or local housing financing authority may rely on such monitoring and determination of tenant eligibility. However, any loan or grant in the original amount of $10,000 ~~3,000~~ or less is ~~shall~~ not ~~be~~ subject to these annual monitoring and determination of tenant eligibility requirements.

(5) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:

(b) Up to 25 percent of the funds made available in each county and eligible municipality from the local housing distribution may be reserved for rental housing for eligible persons or for the purposes enumerated in s. 420.9072(7)(b).

(d) Each local government must use a minimum of 20 percent of its allocation to serve persons with special needs as defined in s. 420.0004. A local government must certify that it will meet this requirement through existing approved strategies in the local housing assistance plan or submit a new local housing assistance plan strategy for this purpose to the corporation for


855434

approval to ensure that it meets these specifications. The first priority of these special needs funds must be to serve persons with developmental disabilities as defined in s. 393.063, with an emphasis on home modifications, including technological enhancements and devices, which will allow homeowners to remain independent in their own homes and maintain their homeownership.

(n) ~~(l)~~ Funds from the local housing distribution not used to meet the criteria established in paragraph (a) or paragraph (c) ~~(b)~~ or not used for the administration of a local housing assistance plan must be used for housing production and finance activities, including, but not limited to, financing preconstruction activities or the purchase of existing units, providing rental housing, and providing home ownership training to prospective home buyers and owners of homes assisted through the local housing assistance plan.

1. Notwithstanding the provisions of paragraphs (a) and (c) ~~(b)~~, program income as defined in s. 420.9071(24) may also be used to fund activities described in this paragraph.

2. When preconstruction due-diligence activities conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs shall be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

3. If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal

855434

Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (g) ~~(e)~~ of

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 140 - 141

and insert:

to that subsection, subsection (35) of that section is amended, and subsection (50) is added to that section, to read:

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

Delete lines 31 - 88

and insert:

developed plans; requiring the office, in consultation with the designated lead agencies for a local homeless continuum of care and with the Council on Homelessness, to develop the system and process of data collection from all lead agencies, subject to certain requirements; deleting the requirement that the Council on Homelessness explore the potential of creating a statewide Homeless Management Information System and encourage future participation of certain award or grant recipients; requiring the State Office on Homelessness to accept and administer moneys appropriated to it to provide annual Challenge Grants


855434

to certain lead agencies of homeless assistance continuums of care; removing the requirement that levels of grant awards be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the respective areas; revising the requirement that a lead agency document the commitment of local government and private organizations to provide matching funds or in-kind support in an amount equal to the grant requested; authorizing expenditures of leveraged funds or resources only for eligible activities, subject to certain requirements; revising the preference given to certain lead agencies that have demonstrated the ability to leverage federal homeless-assistance funding under the Stewart B. McKinney Act; requiring the State Office on Homelessness, in conjunction with the Council on Homelessness, to establish specific objectives by which it may evaluate the outcomes of certain lead agencies; requiring that any funding through the State Office on Homelessness be distributed to lead agencies based on their performance and achievement of specified objectives; revising the factors that may be included as criteria for evaluating the performance of lead agencies; amending s. 420.624, F.S.; revising requirements for the local homeless assistance continuum of care plan; providing that the components of a continuum of care plan should include Rapid ReHousing; requiring that specified components of a


855434

continuum of care plan be coordinated and integrated with other specified services and programs; creating s. 420.6265, F.S.; providing legislative findings and intent relating to Rapid ReHousing; providing a Rapid ReHousing methodology; amending s. 420.9071, F.S.; redefining the terms "local housing incentive strategies" and "rent subsidies"; conforming cross-references; amending s. 420.9072, F.S.; increasing the number of days within which a review committee is required to review a local housing assistance plan or plan revision after receiving it; prohibiting a county or an eligible municipality from expending its portion of the local housing distribution to provide ongoing rent subsidies; specifying exceptions; amending s. 420.9075, F.S.; providing that a certain partnership process of the State Housing Initiatives Partnership Program should involve lead agencies of local homeless assistance continuums of care; encouraging counties and eligible municipalities to develop a strategy within their local housing assistance plans which provides program funds for reducing homelessness; authorizing local governments to create certain regional partnerships to address homeless housing needs identified in local housing assistance plans;

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment to Amendment (855434) (with directory and title amendments)

Between lines 315 and 316
insert:

(10) The State Office on Homelessness may administer moneys appropriated to it for distribution among the 28 local homeless continuums of care designated by the Department of Children and Families.

735674

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 171 - 173

and insert:

Section 5. Paragraphs (a) and (b) of subsection (3) and subsections (4), (5), and (6) of section 420.622, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

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

Delete line 644

and insert:

lead agencies; authorizing the State Office on Homelessness to administer moneys appropriated to it for distribution among certain local homeless continuums of care; amending s. 420.624, F.S.; revising


310862

576-03403-16

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to housing assistance; amending s. 420.503, F.S.; redefining the term "service provider"; amending s. 420.507, F.S.; revising the powers that the Florida Housing Finance Corporation may exercise in developing and administering the State Apartment Incentive Loan Program; deleting a specified timeframe in which the corporation may preclude certain applicants or affiliates of an applicant from further participation in any of the corporation's programs; amending s. 420.5087, F.S.; requiring that State Apartment Incentive Loan Program funds be made available through a competitive solicitation process, subject to certain requirements; requiring program funds be made available for use by certain sponsors during the first 6 months of loan or loan guarantee availability, subject to certain requirements; revising requirements related to all state apartment incentive loans, with the exception of certain loans made to housing communities for the elderly; deleting provisions related to the reservation of funds related to certain tenant groups; conforming a cross-reference; amending s. 420.511, F.S.; deleting a requirement that the corporation's business plan and annual report recognize certain fiscal periods; amending s. 420.622, F.S.; requiring that the State


310862

576-03403-16

Office on Homelessness coordinate among certain agencies and providers to produce a statewide consolidated inventory for the state's entire system of homeless programs which incorporates regionally developed plans; directing the office to create a task force to make recommendations regarding the implementation of a statewide Homeless Management Information System (HMIS), subject to certain requirements; requiring the task force to include in its recommendations the development of a statewide, centralized coordinated assessment system; requiring the task force to submit a report to the Council on Homelessness by a specified date; deleting the requirement that the Council on Homelessness explore the potential of creating a statewide Homeless Management Information System and encourage future participation of certain award or grant recipients; requiring the State Office on Homelessness to accept and administer moneys appropriated to it to provide annual Challenge Grants to certain lead agencies of homeless assistance continuums of care; removing the requirement that levels of grant awards be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the respective areas; allowing expenditures of leveraged funds or resources only for eligible activities, subject to certain requirements; requiring the State Office on Homelessness, in conjunction with the Council on Homelessness, to

576-03403-16

establish specific objectives by which it may evaluate the outcomes of certain lead agencies; requiring that any funding through the State Office on Homelessness be distributed to lead agencies based on their performance and achievement of specified objectives; revising the factors that may be included as criteria for evaluating the performance of lead agencies; amending s. 420.624, F.S.; revising requirements for the local homeless assistance continuum of care plan; providing that the components of a continuum of care plan should include Rapid ReHousing; requiring that specified components of a continuum of care plan be coordinated and integrated with other specified services and programs; creating s. 420.6265, F.S.; providing legislative findings and intent relating to Rapid ReHousing; providing a Rapid ReHousing methodology; amending s. 420.9071, F.S.; redefining the terms "local housing incentive strategies" and "rent subsidies"; conforming a cross-reference; amending s. 420.9072, F.S.; increasing the number of days within which a review committee is required to review a local housing assistance plan or plan revision after receiving it; prohibiting a county or an eligible municipality from expending its portion of the local housing distribution to provide ongoing rent subsidies; specifying exceptions; amending s. 420.9075, F.S.; providing that a certain partnership process of the State Housing Initiatives Partnership Program should involve lead agencies of local homeless

576-03403-16

assistance continuums of care; encouraging counties and eligible municipalities to develop a strategy within their local housing assistance plans which provides program funds for reducing homelessness; revising criteria and administrative procedures governing each local housing assistance plan; revising the criteria that apply to awards made to sponsors or persons for the purpose of providing housing; requiring that a specified report submitted by counties and municipalities include a description of efforts to reduce homelessness; revising the manner in which a certain share that the corporation distributes directly to a participating eligible municipality is calculated; conforming cross-references; amending s. 420.9076, F.S.; revising requirements related to the creation and appointment of members of affordable housing advisory committees; revising requirements related to a report submitted by each advisory committee to the local governing body on affordable housing incentives; requiring the corporation, after issuance of a notice of termination, to distribute directly to a participating eligible municipality a county's share under certain circumstances calculated in a specified manner; creating s. 420.9089, F.S.; providing legislative findings and intent; amending s. 421.04, F.S.; prohibiting a housing authority from applying to the Federal Government to seize projects, units, or vouchers of another established housing authority; amending s. 421.05, F.S.; exempting


310862

576-03403-16

authorities from s. 215.425, F.S.; amending s. 421.091, F.S.; requiring a full financial accounting and audit of public housing agencies to be submitted to the Federal Government pursuant to certain requirements; exempting housing authorities from specified reporting requirements; providing an effective date.

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

Section 1. Subsection (36) of section 420.503, Florida Statutes, is amended to read:

420.503 Definitions.—As used in this part, the term:

(36) "Service provider," except as otherwise defined in s. 420.512(5), means a law firm, investment bank, certified public accounting firm, auditor, trustee bank, credit underwriter, homeowner loan servicer, or any other provider of services to the corporation which offers to perform or performs services to the corporation or other provider for fees in excess of $35,000 ~~$25,000~~ in the aggregate during any fiscal year of the corporation. The term includes the agents, officers, principals, and professional employees of the service provider.

Section 2. Paragraphs (a) and (b) of subsection (22) of section 420.507, Florida Statutes, are amended, present paragraphs (d) through (i) of that subsection are redesignated as (e) through (j), respectively, a new paragraph (d) is added to that subsection, and subsection (35) of that section is amended, to read:

420.507 Powers of the corporation.—The corporation shall


310862

576-03403-16

have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the corporation may:

(a) Make first, second, and other subordinated mortgage loans including variable or fixed rate loans subject to contingent interest for all State Apartment Incentive Loans provided in this chapter based upon available cash flow of the projects. The corporation shall make loans exceeding 25 percent of project cost only to nonprofit organizations and public bodies that are able to secure grants, donations of land, or contributions from other sources and to projects meeting the criteria of subparagraph 1. Mortgage loans shall be made available at the following rates of interest:

1. Zero to 3 percent interest for sponsors of projects that set aside at least 80 percent of their total units for residents qualifying as farmworkers, commercial fishing workers, the homeless as defined in s. 420.621, or persons with special needs as defined in s. 420.0004(13) over the life of the loan.

2. Zero to 3 percent interest based on the pro rata share of units set aside for homeless residents or persons with special needs if the total of such units is less than 80 percent of the units in the borrower's project.

3. One to 9 percent interest for sponsors of projects targeted at populations other than farmworkers, commercial fishing workers, ~~the~~ homeless persons, or persons with special

needs.

(b) Make loans exceeding 25 percent of project cost when the project serves extremely-low-income persons or projects as provided in paragraph (d).

(d) In counties or rural areas of counties that do not have existing units set aside for homeless persons, forgive indebtedness for loans provided to create permanent rental housing units for persons who are homeless, as defined in s. 420.621(5), or for persons residing in time-limited transitional housing or institutions as a result of a lack of permanent, affordable housing. Such developments must be supported by a local homeless assistance continuum of care developed under s. 420.624; be developed by nonprofit applicants; be small properties as defined by corporation rule; and be a project in the local housing assistance continuum of care plan recognized by the State Office on Homelessness.

(35) To preclude from further participation in any of the corporation's programs~~, for a period of up to 2 years~~, any applicant or affiliate of an applicant which has made a material misrepresentation or engaged in fraudulent actions in connection with any application for a corporation program.

Section 3. Subsections (1) and (3), paragraphs (b), (f), and (k) of subsection (6), and subsection (10) of section 420.5087, Florida Statutes, are amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing

affordable to very-low-income persons.

(1) Program funds shall be made available through a competitive solicitation process ~~distributed over successive 3-year periods~~ in a manner that meets the need and demand for very-low-income housing throughout the state. That need and demand must be determined by using the most recent statewide low-income rental housing market studies conducted every 3 years ~~available at the beginning of each 3-year period~~. However, at least 10 percent of the program funds, as calculated on an annual basis, ~~distributed during a 3-year period~~ must be made available ~~allocated~~ to each of the following categories of counties~~,~~ as determined by using the population statistics published in the most recent edition of the Florida Statistical Abstract:

(a) Counties that have a population of 825,000 or more.

(b) Counties that have a population of more than 100,000 but less than 825,000.

(c) Counties that have a population of 100,000 or less.

Any increase in funding required to reach the 10-percent minimum shall be taken from the county category that has the largest portion of the funding ~~allocation~~. The corporation shall adopt rules that ~~which~~ establish an equitable process for distributing any portion of the 10 percent of program funds made available ~~allocated~~ to the county categories specified in this subsection which remains unallocated ~~at the end of a 3-year period~~. Counties that have a population of 100,000 or less shall be given preference under these rules.

(3) During the first 6 months of loan or loan guarantee

availability, program funds shall be made available ~~reserved~~ for use by sponsors who provide the housing set-aside required in subsection (2) for the tenant groups designated in this subsection. The ~~reservation of~~ funds made available to each of these groups shall be determined using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability required by paragraph (6)(b). The ~~reservation of~~ funds made available within each notice of fund availability to the tenant groups in paragraphs (b)-(e) ~~(a), (b), and (c)~~ may not be less than 10 percent of the funds available at that time. Any increase in funding required to reach the required ~~10-percent~~ minimum must be taken from the tenant group that would receive ~~has~~ the largest percentage of available funds in accordance with the study ~~reservation~~. The ~~reservation of~~ funds made available within each notice of fund availability to the tenant group in paragraph (a) ~~(c)~~ may not be less than 5 percent of the funds available at that time. ~~The reservation of funds within each notice of fund availability to the tenant group in paragraph (d) may not be more than 10 percent of the funds available at that time.~~ The tenant groups are:

(a) Commercial fishing workers and farmworkers;

(b) Families;

(c) Persons who are homeless;

(d) Persons with special needs; and

(e) Elderly persons. Ten percent of the amount made available ~~reserved~~ for the elderly shall ~~be reserved to~~ provide loans to sponsors of housing for the elderly for the purpose of making building preservation, health, or sanitation repairs or

improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. Such a loan may not exceed $750,000 per housing community for the elderly. In order to receive the loan, the sponsor of the housing community must make a commitment to match at least 5 percent of the loan amount to pay the cost of such repair or improvement. The corporation shall establish the rate of interest on the loan, which may not exceed 3 percent, and the term of the loan, which may not exceed 15 years; however, if the lien of the corporation's encumbrance is subordinate to the lien of another mortgagee, then the term may be made coterminous with the longest term of the superior lien. The term of the loan shall be based on a credit analysis of the applicant. The corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations, as defined in s. 420.0004(5), where the project has provided affordable housing to the elderly for 15 years or more. The corporation shall establish, by rule, the procedure and criteria for receiving, evaluating, and competitively ranking all applications for loans under this paragraph. A loan application must include evidence of the first mortgagee's having reviewed and approved the sponsor's intent to apply for a loan. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or

security-related repairs or improvements, the following provisions shall apply:

(b) The corporation shall publish a notice of fund availability in a publication of general circulation throughout the state. Such notice shall be published at least 60 days prior to the application deadline and shall provide notice of the availability ~~temporary reservations~~ of funds established in subsection (3).

(f) The review committee established by corporation rule pursuant to this subsection shall make recommendations to the board of directors of the corporation regarding program participation under the State Apartment Incentive Loan Program. The corporation board shall make the final decisions regarding which applicants shall become program participants based on the scores received in the competitive process, further review of applications, and the recommendations of the review committee. The corporation board shall approve or reject applications for loans and shall determine the tentative loan amount available to each applicant selected for participation in the program. The actual loan amount shall be determined pursuant to rule adopted pursuant to s. 420.507(22)(i) ~~s. 420.507(22)(h)~~.

(k) Rent controls shall ~~not be allowed on any project except as required in conjunction with the issuance of tax-exempt bonds or federal low-income housing tax credits and except when the sponsor has committed to set aside units for extremely low-income persons, in which case rents shall~~ be set ~~restricted~~ at the income set-aside levels committed to by the sponsor at the ~~level~~ applicable income limitations established by the corporation for federal low-income tax credits.

~~(10)(a) Notwithstanding subsection (3), for the 2015-2016 fiscal year, the reservation of funds for the tenant groups within each notice of fund availability shall be:~~

~~1. Not less than 10 percent of the funds available at that time for the following tenant groups:~~

~~a. Families;~~

~~b. Persons who are homeless;~~

~~c. Persons with special needs; and~~

~~d. Elderly persons.~~

~~2. Not less than 5 percent of the funds available at that time for the commercial fishing workers and farmworkers tenant group.~~

~~(b) This subsection expires July 1, 2016.~~

Section 4. Subsection (5) of section 420.511, Florida Statutes, is amended to read:

420.511 Strategic business plan; long-range program plan; annual report; audited financial statements.—

(5) The Auditor General shall conduct an operational audit of the accounts and records of the corporation and provide a written report on the audit to the President of the Senate and the Speaker of the House of Representatives by December 1, 2016. ~~Both the corporation's business plan and annual report must recognize the different fiscal periods under which the corporation, the state, the Federal Government, and local governments operate.~~

Section 5. Paragraphs (a) and (b) of subsection (3) and subsections (4), (5), and (6) of section 420.622, Florida Statutes, are amended to read:

420.622 State Office on Homelessness; Council on


310862

576-03403-16

Homelessness.—

(3) The State Office on Homelessness, pursuant to the policies set by the council and subject to the availability of funding, shall:

(a) Coordinate among state, local, and private agencies and providers to produce a statewide consolidated inventory ~~program and financial plan~~ for the state's entire system of homeless programs which incorporates regionally developed plans. Such programs include, but are not limited to:

1. Programs authorized under the Stewart B. McKinney Homeless Assistance Act of 1987, 42 U.S.C. ss. 11371 et seq., and carried out under funds awarded to this state; and

2. Programs, components thereof, or activities that assist persons who are homeless or at risk for homelessness.

(b) Collect, maintain, and make available information concerning persons who are homeless or at risk for homelessness, including demographics information, current services and resources available, the cost and availability of services and programs, and the met and unmet needs of this population. All entities that receive state funding must provide access to all data they maintain in summary form, with no individual identifying information, to assist the council in providing this information. The State Office on Homelessness shall establish a task force to make recommendations regarding the implementation of a statewide Homeless Management Information System (HMIS). The task force shall define the conceptual framework of such a system; study existing statewide HMIS models; establish an inventory of local HMIS systems, including providers and license capacity; examine the aggregated reporting being provided by


310862

576-03403-16

local continuums of care; complete an analysis of current continuum of care resources; and provide recommendations on the costs and benefits of implementing a statewide HMIS. The task force shall also make recommendations regarding the development of a statewide, centralized coordinated assessment system in conjunction with the implementation of a statewide HMIS. The task force findings must be reported to the Council on Homelessness no later than December 31, 2016. ~~The council shall explore the potential of creating a statewide Management Information System (MIS), encouraging the future participation of any bodies that are receiving awards or grants from the state, if such a system were adopted, enacted, and accepted by the state.~~

(4) The State Office on Homelessness, with the concurrence of the Council on Homelessness, shall ~~may~~ accept and administer moneys appropriated to it to provide annual "Challenge Grants" to lead agencies of homeless assistance continuums of care designated by the State Office on Homelessness pursuant to s. 420.624. The department shall establish varying levels of grant awards up to $500,000 per lead agency. ~~Award levels shall be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas.~~ The department, in consultation with the Council on Homelessness, shall specify a grant award level in the notice of the solicitation of grant applications.

(a) To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated catchment area. The continuum of care plan must implement a coordinated assessment or central intake system

to screen, assess, and refer persons seeking assistance to the appropriate service provider. The lead agency shall also document the commitment of local government and private organizations to provide matching funds or in-kind support in an amount equal to the grant requested. Expenditures of leveraged funds or resources, including third-party cash or in-kind contributions, are permitted only for eligible activities committed on one project which have not been used as leverage or match for any other project or program and must be certified through a written commitment.

(b) Preference must be given to those lead agencies that have demonstrated the ability of their continuum of care to provide quality services to homeless persons and the ability to leverage federal homeless-assistance funding under the Stewart B. McKinney Act and private funding for the provision of services to homeless persons.

(c) Preference must be given to lead agencies in catchment areas with the greatest need for the provision of housing and services to the homeless, relative to the population of the catchment area.

(d) The grant may be used to fund any of the housing, program, or service needs included in the local homeless assistance continuum of care plan. The lead agency may allocate the grant to programs, services, or housing providers that implement the local homeless assistance continuum care plan. The lead agency may provide subgrants to a local agency to implement programs or services or provide housing identified for funding in the lead agency's application to the department. A lead agency may spend a maximum of 8 percent of its funding on

administrative costs.

(e) The lead agency shall submit a final report to the department documenting the outcomes achieved by the grant in enabling persons who are homeless to return to permanent housing thereby ending such person's episode of homelessness.

(5) The State Office on Homelessness, with the concurrence of the Council on Homelessness, may administer moneys appropriated to it to provide homeless housing assistance grants annually to lead agencies for local homeless assistance continuum of care, as recognized by the State Office on Homelessness, to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. These moneys shall consist of any sums that the state may appropriate, as well as money received from donations, gifts, bequests, or otherwise from any public or private source, which are intended to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.

(a) Grant applicants shall be ranked competitively. Preference must be given to applicants who leverage additional private funds and public funds, particularly federal funds designated for the acquisition, construction, or rehabilitation of transitional or permanent housing for homeless persons; who acquire, build, or rehabilitate the greatest number of units; or ~~and~~ who acquire, build, or rehabilitate in catchment areas having the greatest need for housing for the homeless relative to the population of the catchment area.

(b) Funding for any particular project may not exceed $750,000.

(c) Projects must reserve, for a minimum of 10 years, the

number of units acquired, constructed, or rehabilitated through homeless housing assistance grant funding to serve persons who are homeless at the time they assume tenancy.

(d) No more than two grants may be awarded annually in any given local homeless assistance continuum of care catchment area.

(e) A project may not be funded which is not included in the local homeless assistance continuum of care plan, as recognized by the State Office on Homelessness, for the catchment area in which the project is located.

(f) The maximum percentage of funds that the State Office on Homelessness and each applicant may spend on administrative costs is 5 percent.

(6) The State Office on Homelessness, in conjunction with the Council on Homelessness, shall establish performance measures and specific objectives by which it may ~~to~~ evaluate the ~~effective~~ performance and outcomes of lead agencies that receive grant funds. Any funding through the State Office on Homelessness shall be distributed to lead agencies based on their overall performance and their achievement of specified objectives. Each lead agency for which grants are made under this section shall provide the State Office on Homelessness a thorough evaluation of the effectiveness of the program in achieving its stated purpose. In evaluating the performance of the lead agencies, the State Office on Homelessness shall base its criteria upon the program objectives, goals, and priorities that were set forth by the lead agencies in their proposals for funding. Such criteria may include, but not be limited to, the number of persons or households that are no longer homeless, the

rate of recidivism to homelessness, and the number of persons who obtain gainful employment ~~homeless individuals provided shelter, food, counseling, and job training~~.

Section 6. Subsections (3), (7), and (8) of section 420.624, Florida Statutes, are amended to read:

420.624 Local homeless assistance continuum of care.—

(3) Communities or regions seeking to implement a local homeless assistance continuum of care are encouraged to develop and annually update a written plan that includes a vision for the continuum of care, an assessment of the supply of and demand for housing and services for the homeless population, and specific strategies and processes for providing the components of the continuum of care. The State Office on Homelessness, in conjunction with the Council on Homelessness, shall include in the plan a methodology for assessing performance and outcomes. The State Office on Homelessness shall supply a standardized format for written plans, including the reporting of data.

(7) The components of a continuum of care plan should include:

(a) Outreach, intake, and assessment procedures in order to identify the service and housing needs of an individual or family and to link them with appropriate housing, services, resources, and opportunities;

(b) Emergency shelter, in order to provide a safe, decent alternative to living in the streets;

(c) Transitional housing;

(d) Supportive services, designed to assist with the development of the skills necessary to secure and retain permanent housing;

(e) Permanent supportive housing;

(f) Rapid ReHousing, as specified in s. 420.6265;

(g) ~~(f)~~ Permanent housing;

(h) ~~(g)~~ Linkages and referral mechanisms among all components to facilitate the movement of individuals and families toward permanent housing and self-sufficiency;

(i) ~~(h)~~ Services and resources to prevent housed persons from becoming or returning to homelessness; and

(j) ~~(i)~~ An ongoing planning mechanism to address the needs of all subgroups of the homeless population, including but not limited to:

1. Single adult males;
2. Single adult females;
3. Families with children;
4. Families with no children;
5. Unaccompanied children and youth;
6. Elderly persons;
7. Persons with drug or alcohol addictions;
8. Persons with mental illness;
9. Persons with dual or multiple physical or mental disorders;
10. Victims of domestic violence; and
11. Persons living with HIV/AIDS.

(8) Continuum of care plans must promote participation by all interested individuals and organizations and may not exclude individuals and organizations on the basis of race, color, national origin, sex, handicap, familial status, or religion. Faith-based organizations must be encouraged to participate. To the extent possible, these components must ~~should~~ be coordinated

and integrated with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Assistance Program, and services funded through the Mental Health and Substance Abuse Block Grant, the Workforce Investment Act, and the welfare-to-work grant program.

Section 7. Section 420.6265, Florida Statutes, is created to read:

420.6265 Rapid ReHousing.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that Rapid ReHousing is a strategy of using temporary financial assistance and case management to quickly move an individual or family out of homelessness and into permanent housing.

(b) The Legislature also finds that public and private solutions to homelessness in the past have focused on providing individuals and families who are experiencing homelessness with emergency shelter, transitional housing, or a combination of both. While emergency shelter and transitional housing programs may provide critical access to services for individuals and families in crisis, the programs often fail to address their long-term needs.

(c) The Legislature further finds that most households become homeless as a result of a financial crisis that prevents individuals and families from paying rent or a domestic conflict that results in one member being ejected or leaving without resources or a plan for housing.

(d) The Legislature further finds that Rapid ReHousing is

an alternative approach to the current system of emergency shelter or transitional housing which tends to reduce the length of time a person is homeless and has proven to be cost effective.

(e) It is therefore the intent of the Legislature to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of supports provided in the permanent supportive housing model.

(2) RAPID REHOUSING METHODOLOGY.—

(a) The Rapid ReHousing response to homelessness differs from traditional approaches to addressing homelessness by focusing on each individual's or family's barriers to housing. By using this approach, communities can significantly reduce the amount of time that individuals and families are homeless and prevent further episodes of homelessness.

(b) In Rapid ReHousing, an individual or family is identified as being homeless, temporary assistance is provided to allow the individual or family to obtain permanent housing as quickly as possible, and, if needed, assistance is provided to allow the individual or family to retain housing.

(c) The objective of Rapid ReHousing is to provide assistance for as short a term as possible so that the individual or family receiving assistance does not develop a dependency on the assistance.

Section 8. Subsections (16), (25), and (26) of section 420.9071, Florida Statutes, are amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(16) "Local housing incentive strategies" means local regulatory reform or incentive programs to encourage or facilitate affordable housing production, which include at a minimum, assurance that permits ~~as defined in s. 163.3164~~ for affordable housing projects are expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.; an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption; and a schedule for implementing the incentive strategies. Local housing incentive strategies may also include other regulatory reforms, such as those enumerated in s. 420.9076 or those recommended by the affordable housing advisory committee in its triennial evaluation of the implementation of affordable housing incentives, and adopted by the local governing body.

(25) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5)(i) ~~s. 420.9075(5)(h)~~ from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award.

(26) "Rent subsidies" means ongoing monthly rental assistance. ~~The term does not include initial assistance to tenants, such as grants or loans for security and utility deposits.~~

Section 9. Paragraph (b) of subsection (3) and subsection (7) of section 420.9072, Florida Statutes, are amended to read:

420.9072 State Housing Initiatives Partnership Program.—The

State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(3)

(b) Within 45 ~~30~~ days after receiving a plan, the review committee shall review the plan and either approve it or identify inconsistencies with the requirements of the program. The corporation shall assist a local government in revising its plan if it initially proves to be inconsistent with program requirements. A plan that is revised by the local government to achieve consistency with program requirements shall be reviewed within 45 ~~30~~ days after submission. The deadlines for submitting original and revised plans shall be established by corporation rule; however, the corporation shall not require submission of a new local housing assistance plan to implement amendments to this act until the currently effective plan expires.

(7)(a) A county or an eligible municipality must expend its portion of the local housing distribution only to implement a local housing assistance plan or as provided in this subsection. ~~A county or an eligible municipality may not expend its portion of the local housing distribution to provide rent subsidies; however, this does not prohibit the use of funds for security and utility deposit assistance.~~

(b) A county or an eligible municipality may not expend its portion of the local housing distribution to provide ongoing

rent subsidies, except for:

1. Security and utility deposit assistance.

2. Eviction prevention not to exceed 6 months' rent.

3. A rent subsidy program for very-low-income households with at least one adult who is a person with special needs as defined in s. 420.0004 or homeless as defined in s. 420.621. The period of rental assistance may not exceed 12 months for any eligible household.

Section 10. Paragraph (a) of subsection (2) of section 420.9075, Florida Statutes, is amended, paragraph (f) is added to subsection (3) of that section, paragraph (e) of subsection (4) of that section is amended, present paragraphs (b) through (l) of subsection (5) of that section are redesignated as paragraphs (c) through (m), respectively, present paragraph (l) of that subsection is amended, and a new paragraph (b) is added to that subsection, paragraph (i) is added to subsection (10) of that section, and paragraph (b) of subsection (13) of that section is amended, to read:

420.9075 Local housing assistance plans; partnerships.—

(2)(a) Each county and each eligible municipality participating in the State Housing Initiatives Partnership Program shall encourage the involvement of appropriate public sector and private sector entities as partners in order to combine resources to reduce housing costs for the targeted population. This partnership process should involve:

1. Lending institutions.

2. Housing builders and developers.

3. Nonprofit and other community-based housing and service organizations.

4. Providers of professional services relating to affordable housing.

5. Advocates for low-income persons, including, but not limited to, homeless people, the elderly, and migrant farmworkers.

6. Real estate professionals.

7. Other persons or entities who can assist in providing housing or related support services.

8. Lead agencies of local homeless assistance continuums of care.

(3)

(f) Each county and eligible municipality is encouraged to develop a strategy within its local housing assistance plan which provides program funds for reducing homelessness.

(4) Each local housing assistance plan is governed by the following criteria and administrative procedures:

(e) The staff or entity that has administrative authority for implementing a local housing assistance plan assisting rental developments shall annually monitor and determine tenant eligibility or, to the extent another governmental entity or corporation program provides periodic ~~the same~~ monitoring and determination, a municipality, county, or local housing financing authority may rely on such monitoring and determination of tenant eligibility. However, any loan or grant in the original amount of $10,000 ~~3,000~~ or less is ~~shall~~ not ~~be~~ subject to these annual monitoring and determination of tenant eligibility requirements.

(5) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing

eligible housing:

(b) Up to 25 percent of the funds made available in each county and eligible municipality from the local housing distribution may be reserved for rental housing for eligible persons or for the purposes enumerated in s. 420.9072(7)(b).

(m) ~~(l)~~ Funds from the local housing distribution not used to meet the criteria established in paragraph (a) or paragraph (c) ~~(b)~~ or not used for the administration of a local housing assistance plan must be used for housing production and finance activities, including, but not limited to, financing preconstruction activities or the purchase of existing units, providing rental housing, and providing home ownership training to prospective home buyers and owners of homes assisted through the local housing assistance plan.

1. Notwithstanding the provisions of paragraphs (a) and (c) ~~(b)~~, program income as defined in s. 420.9071(24) may also be used to fund activities described in this paragraph.

2. When preconstruction due-diligence activities conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs shall be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

3. If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible

576-03403-16

municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (f) ~~(e)~~ of this subsection.

4. Each county and each eligible municipality may award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy accessibility or health and safety deficiencies. Any other grants must be approved as part of the local housing assistance plan.

(10) Each county or eligible municipality shall submit to the corporation by September 15 of each year a report of its affordable housing programs and accomplishments through June 30 immediately preceding submittal of the report. The report shall be certified as accurate and complete by the local government's chief elected official or his or her designee. Transmittal of the annual report by a county's or eligible municipality's chief elected official, or his or her designee, certifies that the local housing incentive strategies, or, if applicable, the local housing incentive plan, have been implemented or are in the process of being implemented pursuant to the adopted schedule for implementation. The report must include, but is not limited to:

(i) A description of efforts to reduce homelessness.

(13)

(b) If, as a result of its review of the annual report, the corporation determines that a county or eligible municipality has failed to implement a local housing incentive strategy, or,

576-03403-16

if applicable, a local housing incentive plan, it shall send a notice of termination of the local government's share of the local housing distribution by certified mail to the affected county or eligible municipality.

1. The notice must specify a date of termination of the funding if the affected county or eligible municipality does not implement the plan or strategy and provide for a local response. A county or eligible municipality shall respond to the corporation within 30 days after receipt of the notice of termination.

2. The corporation shall consider the local response that extenuating circumstances precluded implementation and grant an extension to the timeframe for implementation. Such an extension shall be made in the form of an extension agreement that provides a timeframe for implementation. The chief elected official of a county or eligible municipality or his or her designee shall have the authority to enter into the agreement on behalf of the local government.

3. If the county or the eligible municipality has not implemented the incentive strategy or entered into an extension agreement by the termination date specified in the notice, the local housing distribution share terminates, and any uncommitted local housing distribution funds held by the affected county or eligible municipality in its local housing assistance trust fund shall be transferred to the Local Government Housing Trust Fund to the credit of the corporation to administer.

4.a. If the affected local government fails to meet the timeframes specified in the agreement, the corporation shall terminate funds. The corporation shall send a notice of

termination of the local government's share of the local housing distribution by certified mail to the affected local government. The notice shall specify the termination date, and any uncommitted funds held by the affected local government shall be transferred to the Local Government Housing Trust Fund to the credit of the corporation to administer.

b. If the corporation terminates funds to a county, but an eligible municipality receiving a local housing distribution pursuant to an interlocal agreement maintains compliance with program requirements, the corporation shall thereafter distribute directly to the participating eligible municipality its share calculated in the manner provided in ss. ~~s.~~ 420.9072 and 420.9073.

c. Any county or eligible municipality whose local distribution share has been terminated may subsequently elect to receive directly its local distribution share by adopting the ordinance, resolution, and local housing assistance plan in the manner and according to the procedures provided in ss. 420.907-420.9079.

Section 11. Subsection (2), paragraph (a) of subsection (4), and paragraph (b) of subsection (7) of section 420.9076, Florida Statutes, are amended to read:

420.9076 Adoption of affordable housing incentive strategies; committees.—

(2) The governing board of a county or municipality shall appoint the members of the affordable housing advisory committee ~~by resolution~~. Pursuant to the terms of any interlocal agreement, a county and municipality may create and jointly appoint an advisory committee ~~to prepare a joint plan~~. The local

action ~~ordinance~~ adopted pursuant to s. 420.9072 which creates the advisory committee and appoints ~~or the resolution appointing~~ the advisory committee members must name at least 8 but not more than 11 ~~provide for 11~~ committee members and specify their terms. The committee must consist of one representative from at least six of the categories below ~~include~~:

(a) A ~~One~~ citizen who is actively engaged in the residential home building industry in connection with affordable housing.

(b) A ~~One~~ citizen who is actively engaged in the banking or mortgage banking industry in connection with affordable housing.

(c) A ~~One~~ citizen who is a representative of those areas of labor actively engaged in home building in connection with affordable housing.

(d) A ~~One~~ citizen who is actively engaged as an advocate for low-income persons in connection with affordable housing.

(e) A ~~One~~ citizen who is actively engaged as a for-profit provider of affordable housing.

(f) A ~~One~~ citizen who is actively engaged as a not-for-profit provider of affordable housing.

(g) A ~~One~~ citizen who is actively engaged as a real estate professional in connection with affordable housing.

(h) A ~~One~~ citizen who actively serves on the local planning agency pursuant to s. 163.3174. If the local planning agency is comprised of the governing board of the county or municipality, the governing board may appoint a designee who is knowledgeable in the local planning process.

(i) A ~~One~~ citizen who resides within the jurisdiction of the local governing body making the appointments.

(j) A ~~One~~ citizen who represents employers within the jurisdiction.

(k) A ~~One~~ citizen who represents essential services personnel, as defined in the local housing assistance plan.

~~If a county or eligible municipality whether due to its small size, the presence of a conflict of interest by prospective appointees, or other reasonable factor, is unable to appoint a citizen actively engaged in these activities in connection with affordable housing, a citizen engaged in the activity without regard to affordable housing may be appointed. Local governments that receive the minimum allocation under the State Housing Initiatives Partnership Program may elect to appoint an affordable housing advisory committee with fewer than 11 representatives if they are unable to find representatives who meet the criteria of paragraphs (a)-(k).~~

(4) Triennially, the advisory committee shall review the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan of the appointing local government and shall recommend specific actions or initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. The recommendations may include the modification or repeal of existing policies, procedures, ordinances, regulations, or plan provisions; the creation of exceptions applicable to affordable housing; or the adoption of new policies, procedures, regulations, ordinances, or plan provisions, including recommendations to amend the local government comprehensive plan and corresponding regulations,

ordinances, and other policies. At a minimum, each advisory committee shall submit a report to the local governing body that includes recommendations on, and triennially thereafter evaluates the implementation of, affordable housing incentives in the following areas:

(a) The processing of approvals of development orders or permits~~, as defined in s. 163.3164,~~ for affordable housing projects is expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.

The advisory committee recommendations may also include other affordable housing incentives identified by the advisory committee. Local governments that receive the minimum allocation under the State Housing Initiatives Partnership Program shall perform the initial review but may elect to not perform the triennial review.

(7) The governing board of the county or the eligible municipality shall notify the corporation by certified mail of its adoption of an amendment of its local housing assistance plan to incorporate local housing incentive strategies. The notice must include a copy of the approved amended plan.

(b) If a county fails to timely adopt an amended local housing assistance plan to incorporate local housing incentive strategies but an eligible municipality receiving a local housing distribution pursuant to an interlocal agreement within the county does timely adopt an amended local housing assistance plan to incorporate local housing incentive strategies, the corporation, after issuance ~~receipt~~ of a notice of termination, shall thereafter distribute directly to the participating

eligible municipality its share calculated in the manner provided in s. 420.9073 ~~s. 420.9072~~.

Section 12. Section 420.9089, Florida Statutes, is created to read:

420.9089 National Housing Trust Fund.—The Legislature finds that more funding for housing to assist individuals and families who are experiencing homelessness or who are at risk of homelessness is needed and encourages the state entity designated to administer funds made available to the state from the National Housing Trust Fund to propose an allocation plan that includes strategies to reduce homelessness and the risk of homelessness in this state. These strategies shall be in addition to strategies developed under s. 420.5087.

Section 13. Subsection (4) is added to section 421.04, Florida Statutes, to read:

421.04 Creation of housing authorities.—

(4) Regardless of the date of its creation, a housing authority may not apply to the Federal Government to seize any projects, units, or vouchers of another established housing authority, irrespective of each housing authority's areas of operation.

Section 14. Subsection (2) of section 421.05, Florida Statutes, is amended to read:

421.05 Appointment, qualifications, and tenure of commissioners; hiring of employees.—

(2) The powers of each authority shall be vested in the commissioners thereof in office from time to time. A majority of the commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers

and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority require a larger number. The mayor with the concurrence of the governing body shall designate ~~which of the commissioners appointed shall be~~ the first chair from among the appointed commissioners, but when the office of the chair of the authority thereafter becomes vacant, the authority shall select a chair from among the ~~its~~ commissioners. An authority shall also select from among the ~~its~~ commissioners a vice chair,~~,~~ and it may employ a secretary, who shall be the executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. Accordingly, authorities are exempt from s. 215.425. ~~For such legal services as it may require,~~ An authority may call upon the chief law officer of the city or may employ its own counsel and legal staff for legal services. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Section 15. Subsection (1) of section 421.091, Florida Statutes, is amended to read:

421.091 Financial accounting and investments; fiscal year.—

(1) A complete and full financial accounting and audit in accordance with federal audit standards of public housing agencies shall be made biennially by a certified public accountant and submitted to the Federal Government in accordance with its policies. Housing authorities are otherwise exempt from the reporting requirements of s. 218.32. ~~A copy of such audit shall be filed with the governing body and with the Auditor~~


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~~General.~~

Section 16. This act shall take effect July 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 Appropriations Committee				
BILL:	SB 1534			
INTRODUCER:	Senator Simmons			
SUBJECT:	Housing Assistance			
DATE:	February 24, 2016	REVISED:		

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.	Gusky	Miller	ATD	**Recommend: Fav/CS**
3.	Gusky	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 1534 makes numerous changes to laws related to housing assistance, including housing for individuals and families who are homeless. The bill:

- Amends the State Apartment Incentive Loan (SAIL) Program to change the reservation requirements for the specified tenant groups to reflect projected need.
- Amends provisions relating to the State Office on Homelessness and the Challenge Grant Program that provides grants to lead agencies of homeless assistance continuums of care, including:
  - Requiring that expenditures of leveraged funds or resources are permitted only for eligible activities committed on one project which have not been used as leverage or match for another project;
  - Removing the requirement that award levels for Challenge Grants be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas; and
  - Requiring any funding distributed to the lead agencies be based on overall performance and achievement of specified objectives, including the number of persons or households that are no longer homeless, the rate of recidivism to homelessness, and the number of persons who obtain gainful employment.
- Expresses legislative intent to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of support provided in the permanent supportive housing model and requires Rapid ReHousing to be added to the components of a continuum of care plan.
- Provides exceptions to the restriction on counties and eligible municipalities related to expenditures of State Housing Initiatives Partnership (SHIP) Program distributions for ongoing rent subsidies.
- Provides that up to 25 percent of the SHIP Program funds made available in a county or municipality may be reserved for rental housing.

- Expresses legislative intent to encourage the state entity that administers funds from the National Housing Trust Fund to propose an allocation plan that includes strategies to reduce statewide homelessness.
- Makes several changes to laws relating to housing authorities, which include:
  - Prohibiting housing authorities, regardless of when they were created, from applying to the federal government to acquire through the exercise of the power of eminent domain any projects, units, or vouchers of another established housing authority;
  - Exempting housing authorities from the provisions of s. 215.425, F.S., which addresses extra compensation, bonuses and severance pay; and
  - Removing the requirement that housing authorities must submit a copy of the biennial financial reports submitted to the federal government to the governing body and the Auditor General.

The bill has an indeterminate, but expected insignificant, fiscal impact on state and local governments. While programs that provide services to homeless persons may receive additional resources, the private sector impact of the bill is indeterminate.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Housing for Individuals with Lower Incomes

In 1986[1] the Legislature found that:
- Decent, safe, and sanitary housing for individuals of very low income, low income, and moderate income is a critical need in the state;
- New and rehabilitated housing must be provided at a cost affordable to such persons in order to alleviate this critical need;
- Special programs are needed to stimulate private enterprise to build and rehabilitate housing in order to help eradicate slum conditions and provide housing for very-low-income persons, low-income persons, and moderate-income persons as a matter of public purpose; and
- Public-private partnerships are an essential means of bringing together resources to provide affordable housing.[2]

As a result of these findings, the Legislature determined that legislation was urgently needed to alleviate crucial problems related to housing shortages for individuals with very low,[3] low[4] and

[1] Chapter 86-192, Laws of Fla.
[2] Section 420.6015, F.S.
[3] "Very-low-income persons" means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.
[4] "Low-income persons" means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.

moderate[5] incomes. In 1986, part VI of ch. 420, F.S., was titled as the "Florida Affordable Care Act of 1986"[6] and programs and funding mechanisms were created over the years to help remedy low-income housing issues.

State Apartment Incentive Loan (SAIL) Program

The SAIL program was created by the Legislature in 1988[7] for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.[8]

The SAIL program provides low-interest loans on a competitive basis to affordable housing developers each year. This funding often serves to bridge the gap between the primary financing and the total cost of the development. SAIL program funds are available to individuals, public entities, and not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very-low-income individuals and families.[9]

SAIL program funds must be distributed in a manner that meets the need and demand for very-low-income housing throughout the state. The need and demand must be determined by using the most recent statewide low-income rental housing market studies available. The SAIL program funding is reserved for use within statutorily defined counties (large, medium, and small)[10] and for properties providing units for specified tenant groups. The University of Florida's Shimberg Center for Housing Studies prepares the rental housing market study for the Florida Finance Housing Corporation (FHFC).[11] Below is a comparison of the actual need based on the 2013 Rental Market Study compared to the current statutory reservation requirements for the specified tenant groups.

[5] "Moderate-income persons" means one or more persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the household is located, whichever is greater.
[6] Chapter 86-192, Laws of Fla., Part VI, was subsequently renamed the "Affordable Housing Planning and Community Assistance Act." Chapter 92-317, Laws of Fla.
[7] Chapter 88-376, Laws of Florida.
[8] Section 420.5087, F.S.
[9] Florida Housing Finance Corporation, *State Apartment Incentive Loan Program*, available at: http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0173 (last visited Jan. 21, 2016).
[10] Section 420.5087(1), F.S., provides that funds must be allocated to the following categories of counties: counties that have a population of 845,000 or more ("large"); counties that have a population of more than 100,000 but less than 825,000 ("medium"); and counties that have a population of 100,000 or less ("small").
[11] Shimberg Center for Housing Studies, University of Florida, *2013 Rental Market Study: Affordable Rental Housing Needs*, April 7, 2013.

Specified Tenant Group	Actual Percentage of Total Households in Need	Current Statutory Reservation Requirements[12]
Commercial fishing workers and farmworker households	4 percent	Not less than 10 percent
Persons who are homeless	10 percent	Not less than 5 percent
Persons with special needs	13 percent	Not more than 10 percent
Elder persons	20 percent	Not less than 10 percent
Families	53 percent	Not less than 10 percent

During the first 6 months of loan or loan guarantee availability, SAIL program funds are required to be reserved for use by sponsors who provide the required housing set-aside for specified tenant groups. Under current law, the statutory requirement to reserve funds for the commercial fishing worker and farmworker household tenant group significantly exceeds the actual housing need for this group. The current statutory "cap" on the reservation for the persons with special needs (no more than 10 percent) does not allow the program to address the actual housing need for this group (13 percent) during the first 6 months of loan or loan guarantee availability.

Funding for the SAIL Program is subject to an annual appropriation.[13]

State Office on Homelessness

In 2001, the Florida Legislature created the State Office on Homelessness (office) within the Department of Children and Families (DCF) to serve as a central point of contact within state government on homelessness. The office is responsible for coordinating resources and programs across all levels of government, and with private providers that serve the homeless. It also manages targeted state grants to support the implementation of local homeless service continuum of care plans.[14]

Council on Homelessness

The inter-agency Council on Homelessness (council) was also created in 2001. The 17-member council is charged with developing recommendations on how to reduce homelessness statewide and advising the State Office on Homelessness.[15]

Local Coalitions for the Homeless

The DCF is required to establish local coalitions to plan, network, coordinate, and monitor the delivery of services to the homeless.[16] Groups and organizations provided the opportunity to participate in such coalitions include:

- Organizations and agencies providing mental health and substance abuse services;
- County health departments and community health centers;
- Organizations and agencies providing food, shelter, or other services targeted to the homeless;

[12] Section 420.5087, F.S.
[13] *Id.*
[14] Section 420.622(1), F.S.
[15] *Id*.
[16] Section 420.623, F.S.

- Local law enforcement agencies;
- Local workforce development boards;
- County and municipal governments;
- Local public housing authorities;
- Local school districts;
- Local organizations and agencies serving specific subgroups of the homeless population such as veterans, victims of domestic violence, persons with HIV/AIDS, and runaway youth; and
- Local community-based care alliances.[17]

Continuum of Care

A local coalition serves as the lead agency for the local homeless assistance continuum of care (CoC).[18] A local CoC is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.[19] The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions.[20]

The DCF interacts with the state's 28 CoCs through the office, which serves as the state's central point of contact on homelessness. The office has designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The office has made these designations in consultation with the local homeless coalitions and the Florida offices of the federal Department of Housing and Urban Development (HUD).

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD. The plan also makes the community eligible to compete for the state's Challenge Grants and Homeless Housing Assistance Grants.[21]

Challenge Grants

The office is authorized to accept and administer moneys appropriated to it, for the purpose of providing Challenge Grants annually to designated lead agencies of homeless assistance CoCs.[22] The office may award grants in an amount of up to $500,000 per lead agency.[23] A lead agency may spend a maximum of 8 percent of its funding on administrative costs. To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated area.[24]

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[17] *Id*.
[18] *Id*.
[19] Section 420.624, F.S.
[20] *Id*.
[21] Florida Department of Children and Families, *Lead Agencies*, available at: http://www.myflfamilies.com/service-programs/homelessness/lead-agencies (last visited Jan. 21, 2016).
[22] "Section 420.621(1), F.S., defines "Continuum of Care" to mean the community components needed to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximum self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness."
[23] Section 420.622, F.S.
[24] *Id*.

Pursuant to s. 420.624, F.S., the DCF provides funding for local homeless assistance CoC, which is a framework for providing an array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk of becoming homeless. There is no statutorily identified funding source for this program.[25]

Pursuant to s. 420.606(3), F.S., the DEO provides training and technical assistance to staff of state and local government entities, community-based organizations, and persons forming such organizations for the purpose of developing new housing and rehabilitating existing housing that is affordable for very-low-income persons, low-income persons, and moderate-income persons. There is no statutorily identified funding source for this program.[26]

Homeless Housing Assistance Grants

The office is authorized to accept and administer moneys appropriated to it to provide Homeless Housing Assistance Grants annually to lead agencies of local homeless assistance CoC. The grants may not exceed $750,000 per project and an applicant may spend a maximum of 5 percent of its funding on administrative costs. The grant funds must be used to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. The funds available for the eligible grant activities may be appropriated, received from donations, gifts, or from any public or private source.[27]

Rapid ReHousing

Rapid ReHousing is a model for providing housing for individuals and families who are homeless. The model places a priority on moving a family or individual experiencing homelessness into permanent housing as quickly as possible, hopefully within 30 days of a client becoming homeless and entering a program. While originally focused primarily on people experiencing homelessness due to short-term financial crises, programs across the country have begun to assist individuals and families who are traditionally perceived as more difficult to serve. This includes people with limited or no income, survivors of domestic violence, and those with substance abuse issues. Although the duration of financial assistance may vary, many programs find that, on average, 4 to 6 months of financial assistance is sufficient to stably re-house a household.[28]

Since federal funding for rapid re-housing first became available in 2008, a number of communities, including Palm Beach County, Florida, that prioritized rapid re-housing as a response to homelessness have seen decreases in the amount of time that households spend homeless, less recidivism, and improved permanent housing outcomes relative to other available interventions.[29]

There are three core components of rapid re-housing: housing identification, rent and move-in assistance (financial), and rapid re-housing case management and services. While all three

[25] Department of Economic Opportunity, *House Bill 379 Analysis*, (January 22, 2015).
[26] *Id*.
[27] *Id*.
[28] National Alliance to End Homelessness, *Rapid Re-Housing: A History and Core Components*, (2014), available at: http://www.endhomelessness.org/library/entry/rapid-re-housing-a-history-and-core-components (last visited Jan. 21, 2016).
[29] *Id*.

components are present and available in effective rapid re-housing programs, there are instances where the components are provided by different entities or agencies, or where a household does not utilize all three.[30] A key element of rapid re-housing is the "Housing First" philosophy, which offers housing without preconditions such as employment, income, lack of a criminal background, or sobriety. If issues such as these need to be addressed, the household can address them most effectively once they are in housing.[31]

State Housing Initiatives Partnership (SHIP) Program

The SHIP Program was created in 1992[32] to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to serve very-low, low, and moderate-income families and is administered by the Florida Housing Finance Corporation (FHFC). A dedicated funding source for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. The SHIP Program is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program under an established formula.[33]

National Housing Trust Fund

In July 2008, the federal Housing and Economic Recovery Act was signed into law,[34] establishing a National Housing Trust Fund (NHTF or trust fund), among other housing-related provisions. Although the National Housing Trust Fund has been established, a permanent funding stream has not been secured.[35]

The goal of the trust fund is to provide ongoing, permanent, dedicated, and sufficient sources of revenue to build, rehabilitate, and preserve 1.5 million units of housing for the lowest-income families, including people experiencing homelessness, over the next 10 years. The NHTF particularly aims to increase and preserve the supply of rental housing that is affordable for extremely[36] and very-low-income households, and increase homeownership opportunities for those households. To prevent funding for the NHTF from competing with existing HUD programs, this revenue is expected to be generated separately from the current federal appropriations process.[37]

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[30] *Id*.
[31] The Florida Legislature expressed the intent to encourage homeless continuums of care to adopt the Housing First approach to ending homelessness for individuals and families in 2009. See s. 420.6275, F.S.
[32] Chapter 92-317, Laws of Fla.
[33] Section 420.9073, F.S.
[34] Public Law 110-289.
[35] The National Alliance to End Homelessness. *National Housing Trust Fund*, available at: http://www.endhomelessness.org/pages/national_housing_trust_fund (last visited Jan. 21, 2016).
[36] "Extremely-low-income persons" means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 30 percent of the median annual adjusted gross income for households within the state. The FHFC may adjust this amount annually by rule to provide that in lower-income counties, extremely-low income may exceed 30 percent of area median income and that in higher-income counties, extremely-low income may be less than 30 percent of area median income.
[37] The National Alliance to End Homelessness, *National Housing Trust Fund*, available at: http://www.endhomelessness.org/pages/national_housing_trust_fund (last visited Jan. 21, 2016).

Housing Authorities and Eminent Domain

A housing authority has the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes.[38] Property already devoted to a public use may be acquired in like manner, so long as no real property belonging to the city, the county, the state, or any political subdivision is acquired without its consent.

III. Effect of Proposed Changes:

Section 1 amends s. 420.5087, F.S., relating to the State Apartment Incentive Loan (SAIL) Program, to change the reservation requirements for three of the five tenant groups. The set-aside for the persons who are in the homeless tenant group is increased from not less than 5 percent to at least 10 percent. The cap of not "more than 10 percent" for the persons with special needs tenant group is replaced with at least 10 percent. The bill requires that at least 10 percent of SAIL Program funds available must be reserved for four of the five tenant groups. At least 5 percent of available SAIL Program funds must be reserved for the commercial fishing workers and farmworkers tenant group.

Section 2 amends s. 420.622, F.S., relating to the State Office on Homelessness (office) and the Council on Homelessness (council), to:

- Require the office, in coordination with other entities, to produce an inventory of state homeless programs instead of the currently required program and financial plan.
- Require the office to establish a task force to make recommendations related to the implementation of a statewide Homeless Management Information System (HMIS). The task force must make its recommendations to the council by December 31, 2016.
- Require, rather than allow, the office and the council to accept and administer moneys appropriated for annual Challenge Grants.
- Remove the requirement that award levels for Challenge Grants be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas.
- Provide requirements related to expenditures of leveraged funds or resources. These funds may only be used for eligible activities committed on one project which have not been used as leverage or match for any other project.
- Require the office, in conjunction with the council, to establish performance measures and specific objectives to evaluate the performance and outcomes of lead agencies that receive grant funds.
- Require any funding distributed to the lead agencies be based on overall performance and achievement of specified objectives, including the number of persons or households that are no longer homeless, the rate of recidivism to homelessness, and the number of persons who obtain gainful employment.

Section 3 amends s. 420.624, F.S., relating to the local homeless assistance continuum of care (CoC), to require the office and the council to include a methodology for assessing performance and outcomes and data reporting in the CoC plan that communities seeking to implement a local

[38] Section 421.12, F.S. An authority may exercise the power of eminent domain pursuant to ch. 73 and ch. 74, F.S.

homeless assistance continuum of care are encouraged to develop. The bill also requires Rapid ReHousing to be added to the components of a continuum of care plan.

Section 4 creates s. 420.6265, F.S., relating to Rapid ReHousing, to express legislative intent to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of support provided in the permanent supportive housing model.[39] The bill also statutorily prescribes the Rapid Rehousing Methodology.

Section 5 amends s. 420.9071(26), F.S., relating to the definition of "rent subsidies," to allow initial assistance for tenants, such as grants or loans for security and utility deposits.

Section 6 amends s. 420.9072, F.S., relating to the State Housing Initiatives Partnership (SHIP) Program, to provide that a county or an eligible municipality may not spend its portion of the local housing distribution to provide ongoing rent subsidies with the exception of:

- Security and utility deposit assistance.
- Eviction prevention not to exceed rent for 6 months.
- A rent subsidy program for very-low-income households that meet specified qualifications.

Section 7 amends s. 420.9075, F.S., relating to local housing assistance plans and partnerships, to:

- Add "Lead agencies of local homeless assistance continuums of care" as part of the partnership process to participate in the SHIP Program.
- Add language to encourage eligible municipalities to develop a strategy for providing program funds to reduce homelessness.
- Provide that up to 25 percent of the SHIP Program funds made available in a county or municipality may be reserved for rental housing.
- Require a county or eligible municipality to include a description of efforts to reduce homelessness in the annual report that must be submitted to the FHFC.

Section 8 creates s. 420.9089, F.S., relating to the NHTF, to express legislative intent to encourage the state entity that administers funds from the NHTF to propose an allocation plan that includes strategies to reduce statewide homelessness. The Florida Housing Finance Corporation (FHFC) is the state entity designated by the Governor to administer funds made available to the state from the National Housing Trust Fund (NHTF). The U.S. Department of Housing and Urban Development (HUD) will officially release the NHTF grant amount for each state in April 2016.[40] Each state must adopt an Allocation Plan that has been developed through a public process involving citizen participation, and may include strategies to address

[39] Permanent supportive housing is for individuals who need long-term housing assistance with supportive services in order to stay housed. Individuals and families living in supportive housing often have long histories of homelessness and face persistent obstacles to maintaining housing, such as a serious mental illness, a substance use disorder, or a chronic medical problem. Many supportive housing tenants face more than one of these serious conditions. *See* United States Interagency Council on Homelessness, *Permanent Supportive Housing*, available at https://www.usich.gov/solutions/housing/permanent-supportive-housing (last visited Jan. 21, 2016).

[40] Florida Housing Finance Corporation, *SB 1534 Summary/Comment* (Jan. 13, 2016)(on file with the Senate Appropriations Subcommittee on Transportation, Tourism and Economic Development).

homelessness.[41] The funding must be used primarily to assist households with specified incomes and 90 percent of the funds must be used to preserve and increase the supply of rental housing.[42]

Section 9 amends s. 421.04, F.S., to prohibit housing authorities, regardless of when they were created, from applying to the federal government to acquire through the power of eminent domain any projects, units, or vouchers of another established housing authority, irrespective of each housing authority's area of operation.

Section 10 amends s. 421.05, F.S., to provide that housing authorities are exempt from the provisions of s. 215.425, F.S. Section 215.425, F.S., addresses extra compensation, bonuses, and severance pay.

Section 11 amends s. 421.091, F.S., to exempt housing authorities from reporting requirements of s. 218.32, F.S., which requires each local government to submit an annual financial report for the previous fiscal year to the Department of Financial Services. Housing authorities would still be responsible for submitting a biennial financial accounting and audit, made by a certified public accountant, to the federal government, but would not be required to provide that report to the governing body of the housing authority or the Auditor General.

Section 12 provides an effective date of July 1, 2016.

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:

While programs that serve homeless persons may receive additional resources, the private sector impact of SB 1534 is indeterminate.

[41] *Id.*
[42] *Id.*

C. Government Sector Impact:

The bill has an indeterminate, but expected to be insignificant, fiscal impact on state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 420.5087, 420.622, 420.624, 420.9071, 420.9072, 420.9075, 421.04, 421.05, and 421.091.

This bill creates the following sections of the Florida Statutes: 420.6265 and 420.9089.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Simmons

10-01651A-16 20161534__

A bill to be entitled

An act relating to housing assistance; amending s. 420.5087, F.S.; revising the reservation of funds within each notice of fund availability to specified tenant groups; amending s. 420.622, F.S.; requiring that the State Office on Homelessness coordinate among certain agencies and providers to produce a statewide consolidated inventory for the state's entire system of homeless programs which incorporates regionally developed plans; directing the office to create a task force to make recommendations regarding the implementation of a statewide Homeless Management Information System (HMIS), subject to certain requirements; requiring the task force to include in its recommendations the development of a statewide, centralized coordinated assessment system; requiring the task force to submit a report to the Council on Homelessness by a specified date; deleting the requirement that the Council on Homelessness explore the potential of creating a statewide Homeless Management Information System and encourage future participation of certain award or grant recipients; requiring the State Office on Homelessness to accept and administer moneys appropriated to it to provide annual Challenge Grants to certain lead agencies of homeless assistance continuums of care; removing the requirement that levels of grant awards be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the respective areas; allowing expenditures of leveraged funds or resources only for

10-01651A-16 20161534__

eligible activities, subject to certain requirements; requiring the State Office on Homelessness, in conjunction with the Council on Homelessness, to establish specific objectives by which it may evaluate the outcomes of certain lead agencies; requiring that any funding through the State Office on Homelessness be distributed to lead agencies based on their performance and achievement of specified objectives; revising the factors that may be included as criteria for evaluating the performance of lead agencies; amending s. 420.624, F.S.; revising requirements for the local homeless assistance continuum of care plan; providing that the components of a continuum of care plan should include Rapid ReHousing; requiring that specified components of a continuum of care plan be coordinated and integrated with other specified services and programs; creating s. 420.6265, F.S.; providing legislative findings and intent relating to Rapid ReHousing; providing a Rapid ReHousing methodology; amending s. 420.9071, F.S.; conforming a provision to changes made by the act; redefining the term "rent subsidies"; amending s. 420.9072, F.S.; prohibiting a county or an eligible municipality from expending its portion of the local housing distribution to provide ongoing rent subsidies; specifying exceptions; amending s. 420.9075, F.S.; providing that a certain partnership process of the State Housing Initiatives Partnership Program should involve lead agencies of local homeless assistance

continuums of care; encouraging counties and eligible municipalities to develop a strategy within their local housing assistance plans which provides program funds for reducing homelessness; revising the criteria that apply to awards made to sponsors or persons for the purpose of providing housing; requiring that a specified report submitted by counties and municipalities include a description of efforts to reduce homelessness; creating s. 420.9089, F.S.; providing legislative findings and intent; amending s. 421.04, F.S.; prohibiting a housing authority from applying to the Federal Government to seize projects, units, or vouchers of another established housing authority; amending s. 421.05, F.S.; exempting authorities from s. 215.425, F.S.; amending s. 421.091, F.S.; requiring a full financial accounting and audit of public housing agencies to be submitted to the Federal Government pursuant to certain requirements; exempting housing authorities from specified reporting requirements; providing an effective date.

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

Section 1. Subsection (3) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated

mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(3) During the first 6 months of loan or loan guarantee availability, program funds shall be reserved for use by sponsors who provide the housing set-aside required in subsection (2) for the tenant groups designated in this subsection. The reservation of funds to each of these groups shall be determined using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability required by paragraph (6)(b). The reservation of funds within each notice of fund availability to the tenant groups in paragraphs (b)-(e) ~~(a), (b), and (c)~~ may not be less than 10 percent of the funds available at that time. Any increase in funding required to reach the 10-percent minimum must be taken from the tenant group that has the largest reservation. The reservation of funds within each notice of fund availability to the tenant group in paragraph (a) ~~(c)~~ may not be less than 5 percent of the funds available at that time. ~~The reservation of funds within each notice of fund availability to the tenant group in paragraph (d) may not be more than 10 percent of the funds available at that time.~~ The tenant groups are:

(a) Commercial fishing workers and farmworkers;

(b) Families;

(c) Persons who are homeless;

(d) Persons with special needs; and

(e) Elderly persons. Ten percent of the amount reserved for the elderly shall be reserved to provide loans to sponsors of

housing for the elderly for the purpose of making building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. Such a loan may not exceed $750,000 per housing community for the elderly. In order to receive the loan, the sponsor of the housing community must make a commitment to match at least 5 percent of the loan amount to pay the cost of such repair or improvement. The corporation shall establish the rate of interest on the loan, which may not exceed 3 percent, and the term of the loan, which may not exceed 15 years; however, if the lien of the corporation's encumbrance is subordinate to the lien of another mortgagee, then the term may be made coterminous with the longest term of the superior lien. The term of the loan shall be based on a credit analysis of the applicant. The corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations, as defined in s. 420.0004(5), if ~~where~~ the project has provided affordable housing to the elderly for 15 years or more. The corporation shall establish, by rule, the procedure and criteria for receiving, evaluating, and competitively ranking all applications for loans under this paragraph. A loan application must include evidence of the first mortgagee's having reviewed and approved the sponsor's intent to apply for a loan. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

Section 2. Paragraphs (a) and (b) of subsection (3) and

subsections (4), (5), and (6) of section 420.622, Florida Statutes, are amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(3) The State Office on Homelessness, pursuant to the policies set by the council and subject to the availability of funding, shall:

(a) Coordinate among state, local, and private agencies and providers to produce a statewide consolidated inventory ~~program and financial plan~~ for the state's entire system of homeless programs which incorporates regionally developed plans. Such programs include, but are not limited to:

1. Programs authorized under the Stewart B. McKinney Homeless Assistance Act of 1987, 42 U.S.C. ss. 11371 et seq., and carried out under funds awarded to this state; and

2. Programs, components thereof, or activities that assist persons who are homeless or at risk for homelessness.

(b) Collect, maintain, and make available information concerning persons who are homeless or at risk for homelessness, including demographics information, current services and resources available, the cost and availability of services and programs, and the met and unmet needs of this population. All entities that receive state funding must provide access to all data they maintain in summary form, with no individual identifying information, to assist the council in providing this information. The State Office on Homelessness shall establish a task force to make recommendations regarding the implementation of a statewide Homeless Management Information System (HMIS). The task force shall define the conceptual framework of such a

system; study existing statewide HMIS models; establish an inventory of local HMIS systems, including providers and license capacity; examine the aggregated reporting being provided by local continuums of care; complete an analysis of current continuum of care resources; and provide recommendations on the costs and benefits of implementing a statewide HMIS. The task force shall also make recommendations regarding the development of a statewide, centralized coordinated assessment system in conjunction with the implementation of a statewide HMIS. The task force findings must be reported to the Council on Homelessness no later than December 31, 2016. ~~The council shall explore the potential of creating a statewide Management Information System (MIS), encouraging the future participation of any bodies that are receiving awards or grants from the state, if such a system were adopted, enacted, and accepted by the state.~~

(4) The State Office on Homelessness, with the concurrence of the Council on Homelessness, shall ~~may~~ accept and administer moneys appropriated to it to provide annual "Challenge Grants" to lead agencies of homeless assistance continuums of care designated by the State Office on Homelessness pursuant to s. 420.624. The department shall establish varying levels of grant awards up to $500,000 per lead agency. ~~Award levels shall be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas.~~ The department, in consultation with the Council on Homelessness, shall specify a grant award level in the notice of the solicitation of grant applications.

(a) To qualify for the grant, a lead agency must develop

and implement a local homeless assistance continuum of care plan for its designated catchment area. The continuum of care plan must implement a coordinated assessment or central intake system to screen, assess, and refer persons seeking assistance to the appropriate service provider. The lead agency shall also document the commitment of local government and private organizations to provide matching funds or in-kind support in an amount equal to the grant requested. Expenditures of leveraged funds or resources, including third-party cash or in-kind contributions, are permitted only for eligible activities committed on one project which have not been used as leverage or match for any other project or program and must be certified through a written commitment.

(b) Preference must be given to those lead agencies that have demonstrated the ability of their continuum of care to provide quality services to homeless persons and the ability to leverage federal homeless-assistance funding under the Stewart B. McKinney Act and private funding for the provision of services to homeless persons.

(c) Preference must be given to lead agencies in catchment areas with the greatest need for the provision of housing and services to the homeless, relative to the population of the catchment area.

(d) The grant may be used to fund any of the housing, program, or service needs included in the local homeless assistance continuum of care plan. The lead agency may allocate the grant to programs, services, or housing providers that implement the local homeless assistance continuum care plan. The lead agency may provide subgrants to a local agency to implement

programs or services or provide housing identified for funding in the lead agency's application to the department. A lead agency may spend a maximum of 8 percent of its funding on administrative costs.

(e) The lead agency shall submit a final report to the department documenting the outcomes achieved by the grant in enabling persons who are homeless to return to permanent housing thereby ending such person's episode of homelessness.

(5) The State Office on Homelessness, with the concurrence of the Council on Homelessness, may administer moneys appropriated to it to provide homeless housing assistance grants annually to lead agencies for local homeless assistance continuum of care, as recognized by the State Office on Homelessness, to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. These moneys shall consist of any sums that the state may appropriate, as well as money received from donations, gifts, bequests, or otherwise from any public or private source, which are intended to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.

(a) Grant applicants shall be ranked competitively. Preference must be given to applicants who leverage additional private funds and public funds, particularly federal funds designated for the acquisition, construction, or rehabilitation of transitional or permanent housing for homeless persons; who acquire, build, or rehabilitate the greatest number of units; or ~~and~~ who acquire, build, or rehabilitate in catchment areas having the greatest need for housing for the homeless relative to the population of the catchment area.

(b) Funding for any particular project may not exceed $750,000.

(c) Projects must reserve, for a minimum of 10 years, the number of units acquired, constructed, or rehabilitated through homeless housing assistance grant funding to serve persons who are homeless at the time they assume tenancy.

(d) No more than two grants may be awarded annually in any given local homeless assistance continuum of care catchment area.

(e) A project may not be funded which is not included in the local homeless assistance continuum of care plan, as recognized by the State Office on Homelessness, for the catchment area in which the project is located.

(f) The maximum percentage of funds that the State Office on Homelessness and each applicant may spend on administrative costs is 5 percent.

(6) The State Office on Homelessness, in conjunction with the Council on Homelessness, shall establish performance measures and specific objectives by which it may ~~to~~ evaluate the ~~effective~~ performance and outcomes of lead agencies that receive grant funds. Any funding through the State Office on Homelessness shall be distributed to lead agencies based on their overall performance and their achievement of specified objectives. Each lead agency for which grants are made under this section shall provide the State Office on Homelessness a thorough evaluation of the effectiveness of the program in achieving its stated purpose. In evaluating the performance of the lead agencies, the State Office on Homelessness shall base its criteria upon the program objectives, goals, and priorities

that were set forth by the lead agencies in their proposals for funding. Such criteria may include, but not be limited to, the number of persons or households that are no longer homeless, the rate of recidivism to homelessness, and the number of persons who obtain gainful employment ~~homeless individuals provided shelter, food, counseling, and job training~~.

Section 3. Subsections (3), (7), and (8) of section 420.624, Florida Statutes, are amended to read:

420.624 Local homeless assistance continuum of care.—

(3) Communities or regions seeking to implement a local homeless assistance continuum of care are encouraged to develop and annually update a written plan that includes a vision for the continuum of care, an assessment of the supply of and demand for housing and services for the homeless population, and specific strategies and processes for providing the components of the continuum of care. The State Office on Homelessness, in conjunction with the Council on Homelessness, shall include in the plan a methodology for assessing performance and outcomes. The State Office on Homelessness shall supply a standardized format for written plans, including the reporting of data.

(7) The components of a continuum of care plan should include:

(a) Outreach, intake, and assessment procedures in order to identify the service and housing needs of an individual or family and to link them with appropriate housing, services, resources, and opportunities;

(b) Emergency shelter, in order to provide a safe, decent alternative to living in the streets;

(c) Transitional housing;

(d) Supportive services, designed to assist with the development of the skills necessary to secure and retain permanent housing;

(e) Permanent supportive housing;

(f) Rapid ReHousing, as specified in s. 420.6265;

(g) ~~(f)~~ Permanent housing;

(h) ~~(g)~~ Linkages and referral mechanisms among all components to facilitate the movement of individuals and families toward permanent housing and self-sufficiency;

(i) ~~(h)~~ Services and resources to prevent housed persons from becoming or returning to homelessness; and

(j) ~~(i)~~ An ongoing planning mechanism to address the needs of all subgroups of the homeless population, including but not limited to:

1. Single adult males;
2. Single adult females;
3. Families with children;
4. Families with no children;
5. Unaccompanied children and youth;
6. Elderly persons;
7. Persons with drug or alcohol addictions;
8. Persons with mental illness;
9. Persons with dual or multiple physical or mental disorders;
10. Victims of domestic violence; and
11. Persons living with HIV/AIDS.

(8) Continuum of care plans must promote participation by all interested individuals and organizations and may not exclude individuals and organizations on the basis of race, color,

national origin, sex, handicap, familial status, or religion. Faith-based organizations must be encouraged to participate. To the extent possible, these components must ~~should~~ be coordinated and integrated with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Assistance Program, and services funded through the Mental Health and Substance Abuse Block Grant, the Workforce Investment Act, and the welfare-to-work grant program.

Section 4. Section 420.6265, Florida Statutes, is created to read:

420.6265 Rapid ReHousing.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that Rapid ReHousing is a strategy of using temporary financial assistance and case management to quickly move an individual or family out of homelessness and into permanent housing.

(b) The Legislature also finds that public and private solutions to homelessness in the past have focused on providing individuals and families who are experiencing homelessness with emergency shelter, transitional housing, or a combination of both. While emergency shelter and transitional housing programs may provide critical access to services for individuals and families in crisis, the programs often fail to address their long-term needs.

(c) The Legislature further finds that most households become homeless as a result of a financial crisis that prevents individuals and families from paying rent or a domestic conflict

that results in one member being ejected or leaving without resources or a plan for housing.

(d) The Legislature further finds that Rapid ReHousing is an alternative approach to the current system of emergency shelter or transitional housing which tends to reduce the length of time a person is homeless and has proven to be cost effective.

(e) It is therefore the intent of the Legislature to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of supports provided in the permanent supportive housing model.

(2) RAPID REHOUSING METHODOLOGY.—

(a) The Rapid ReHousing response to homelessness differs from traditional approaches to addressing homelessness by focusing on each individual's or family's barriers to housing. By using this approach, communities can significantly reduce the amount of time that individuals and families are homeless and prevent further episodes of homelessness.

(b) In Rapid ReHousing, an individual or family is identified as being homeless, temporary assistance is provided to allow the individual or family to obtain permanent housing as quickly as possible, and, if needed, assistance is provided to allow the individual or family to retain housing.

(c) The objective of Rapid ReHousing is to provide assistance for as short a term as possible so that the individual or family receiving assistance does not develop a dependency on the assistance.

Section 5. Subsections (25) and (26) of section 420.9071,

Florida Statutes, are amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(25) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5)(i) ~~s. 420.9075(5)(h)~~ from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award.

(26) "Rent subsidies" means ongoing monthly rental assistance. ~~The term does not include initial assistance to tenants, such as grants or loans for security and utility deposits.~~

Section 6. Subsection (7) of section 420.9072, Florida Statutes, is amended, present subsections (8) and (9) of that section are redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(7) A county or an eligible municipality must expend its portion of the local housing distribution only to implement a

local housing assistance plan or as provided in this subsection. ~~A county or an eligible municipality may not expend its portion of the local housing distribution to provide rent subsidies; however, this does not prohibit the use of funds for security and utility deposit assistance.~~

(8) A county or an eligible municipality may not expend its portion of the local housing distribution to provide ongoing rent subsidies, except for:

(a) Security and utility deposit assistance.

(b) Eviction prevention not to exceed 6 months' rent.

(c) A rent subsidy program for very-low-income households with at least one adult who is a person with special needs as defined in s. 420.0004 or homeless as defined in s. 420.621. The period of rental assistance may not exceed 12 months for any eligible household.

Section 7. Paragraph (a) of subsection (2) of section 420.9075, Florida Statutes, is amended, paragraph (f) is added to subsection (3) of that section, subsection (5) of that section is amended, and paragraph (i) is added to subsection (10) of that section, to read:

420.9075 Local housing assistance plans; partnerships.—

(2)(a) Each county and each eligible municipality participating in the State Housing Initiatives Partnership Program shall encourage the involvement of appropriate public sector and private sector entities as partners in order to combine resources to reduce housing costs for the targeted population. This partnership process should involve:

1. Lending institutions.

2. Housing builders and developers.

3. Nonprofit and other community-based housing and service organizations.

4. Providers of professional services relating to affordable housing.

5. Advocates for low-income persons, including, but not limited to, homeless people, the elderly, and migrant farmworkers.

6. Real estate professionals.

7. Other persons or entities who can assist in providing housing or related support services.

8. Lead agencies of local homeless assistance continuums of care.

(3)

(f) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan which provides program funds for reducing homelessness.

(5) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:

(a) At least 65 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for home ownership for eligible persons.

(b) Up to 25 percent of the funds made available in each county and eligible municipality from the local housing distribution may be reserved for rental housing for eligible persons or for the purposes enumerated in s. 420.9072(8).

(c) ~~(b)~~ At least 75 percent of the funds made available in

each county and eligible municipality from the local housing distribution must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing.

(d) ~~(c)~~ Not more than 20 percent of the funds made available in each county and eligible municipality from the local housing distribution may be used for manufactured housing.

(e) ~~(d)~~ The sales price or value of new or existing eligible housing may not exceed 90 percent of the average area purchase price in the statistical area in which the eligible housing is located. Such average area purchase price may be that calculated for any 12-month period beginning not earlier than the fourth calendar year before ~~prior to~~ the year in which the award occurs or as otherwise established by the United States Department of the Treasury.

(f) ~~(c)~~ 1. All units constructed, rehabilitated, or otherwise assisted with the funds provided from the local housing assistance trust fund must be occupied by very-low-income persons, low-income persons, and moderate-income persons except as otherwise provided in this section.

2. At least 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to very-low-income persons or eligible sponsors who will serve very-low-income persons and at least an additional 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to low-income persons or eligible sponsors who will serve low-income persons. This subparagraph does not apply to a county or an eligible municipality that includes, or has included within the previous 5 years, an area of critical state concern designated or ratified by the

Legislature for which the Legislature has declared its intent to provide affordable housing. The exemption created by this act expires on July 1, 2013, and shall apply retroactively.

(g) ~~(f)~~ Loans shall be provided for periods not exceeding 30 years, except for deferred payment loans or loans that extend beyond 30 years which continue to serve eligible persons.

(h) ~~(g)~~ Loans or grants for eligible rental housing constructed, rehabilitated, or otherwise assisted from the local housing assistance trust fund must be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan unless reserved for eligible persons for 15 years or the term of the assistance, whichever period is longer. Eligible sponsors that offer rental housing for sale before 15 years or that have remaining mortgages funded under this program must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible persons.

(i) ~~(h)~~ Loans or grants for eligible owner-occupied housing constructed, rehabilitated, or otherwise assisted from proceeds provided from the local housing assistance trust fund shall be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan.

(j) ~~(i)~~ The total amount of monthly mortgage payments or the amount of monthly rent charged by the eligible sponsor or her or his designee must be made affordable.

(k) ~~(j)~~ The maximum sales price or value per unit and the maximum award per unit for eligible housing benefiting from awards made pursuant to this section must be established in the

local housing assistance plan.

(l) ~~(k)~~ The benefit of assistance provided through the State Housing Initiatives Partnership Program must accrue to eligible persons occupying eligible housing. This provision shall not be construed to prohibit use of the local housing distribution funds for a mixed income rental development.

(m) ~~(l)~~ Funds from the local housing distribution not used to meet the criteria established in paragraph (a) or paragraph (c) ~~(b)~~ or not used for the administration of a local housing assistance plan must be used for housing production and finance activities, including, but not limited to, financing preconstruction activities or the purchase of existing units, providing rental housing, and providing home ownership training to prospective home buyers and owners of homes assisted through the local housing assistance plan.

1. Notwithstanding ~~the provisions of~~ paragraphs (a) and (c) ~~(b)~~, program income as defined in s. 420.9071(24) may also be used to fund activities described in this paragraph.

2. When preconstruction due-diligence activities conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs shall be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

3. If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal

Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (f) ~~(e)~~ of this subsection.

4. Each county and each eligible municipality may award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy accessibility or health and safety deficiencies. Any other grants must be approved as part of the local housing assistance plan.

(10) Each county or eligible municipality shall submit to the corporation by September 15 of each year a report of its affordable housing programs and accomplishments through June 30 immediately preceding submittal of the report. The report shall be certified as accurate and complete by the local government's chief elected official or his or her designee. Transmittal of the annual report by a county's or eligible municipality's chief elected official, or his or her designee, certifies that the local housing incentive strategies, or, if applicable, the local housing incentive plan, have been implemented or are in the process of being implemented pursuant to the adopted schedule for implementation. The report must include, but is not limited to:

(i) A description of efforts to reduce homelessness.

Section 8. Section 420.9089, Florida Statutes, is created to read:

420.9089 National Housing Trust Fund.—The Legislature finds

that more funding for housing to assist the homeless is needed and encourages the state entity designated to administer funds made available to the state from the National Housing Trust Fund to propose an allocation plan that includes strategies to reduce homelessness in this state. These strategies to address homelessness shall be in addition to strategies under s. 420.5087.

Section 9. Subsection (4) is added to section 421.04, Florida Statutes, to read:

421.04 Creation of housing authorities.—

(4) Regardless of the date of its creation, a housing authority may not apply to the Federal Government to seize any projects, units, or vouchers of another established housing authority, irrespective of each housing authority's areas of operation.

Section 10. Subsection (2) of section 421.05, Florida Statutes, is amended to read:

421.05 Appointment, qualifications, and tenure of commissioners; hiring of employees.—

(2) The powers of each authority shall be vested in the commissioners thereof in office from time to time. A majority of the commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority require a larger number. The mayor with the concurrence of the governing body shall designate ~~which of the commissioners appointed shall be~~ the first chair from among the appointed commissioners, but when the

office of the chair of the authority thereafter becomes vacant, the authority shall select a chair from among the ~~its~~ commissioners. An authority shall also select from among the ~~its~~ commissioners a vice chair~~,~~ ~~;~~ and it may employ a secretary, who shall be the executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. Accordingly, authorities are exempt from s. 215.425. ~~For such legal services as it may require,~~ An authority may call upon the chief law officer of the city or may employ its own counsel and legal staff for legal services. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Section 11. Subsection (1) of section 421.091, Florida Statutes, is amended to read:

421.091 Financial accounting and investments; fiscal year.—

(1) A complete and full financial accounting and audit in accordance with federal audit standards of public housing agencies shall be made biennially by a certified public accountant and submitted to the Federal Government in accordance with its policies. Housing authorities are otherwise exempt from the reporting requirements of s. 218.32. ~~A copy of such audit shall be filed with the governing body and with the Auditor General.~~

Section 12. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1538
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Evers
SUBJECT:	Veterans Employment
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Favorable**
3.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1538 requires each state agency and authorizes the political subdivisions of the state to develop and implement a written veterans recruitment plan to establish annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce.

The bill requires the Department of Management Services (DMS) to annually collect and publish on its website and include in its annual workforce report statistical data for each state agency on the following:

- The number of persons who claim veterans' preference;
- The number of persons who are hired through the veterans' preference; and
- The number of persons who are hired as a result of the veterans' recruitment plan.

The bill requires each veterans' recruitment plan to apply to the same veterans and veterans' family members that are addressed in the Florida law governing veterans' preference in appointment and retention.

This bill has an indeterminate fiscal impact to the state. See Section V.

The effective date of the bill is October 1, 2016.

II. Present Situation:

Veteran Presence in Florida

The law defines the term "veteran" as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions.[1] Currently, there are 21.8 million veterans in the United States, of which, over 1.6 million reside in Florida.[2] This makes Florida the state with the third largest veteran population, behind only California and Texas.[3] Approximately 299,000 of Florida's veterans are service-disabled.[4]

Florida's overall unemployment rate for calendar year 2014 was 6.3 percent.[5] The unemployment rate among Florida veterans was five percent compared to 5.3 percent nationally.[6] The unemployment rate among Florida Post-9/11 era veterans averaged 4.8 percent compared to 7.2 percent nationally.[7]

Veterans' Preference in Employment

Florida law has included some form of veterans' employment preference since 1947.[8] The purpose of the veterans' preference statute is to reward those who served their country in a time of need and to recognize the qualities and traits developed by military service.[9] In 2014, the Legislature expanded Florida's veterans' preference in the public employment process to increase the field of persons eligible for veterans' preference to include all veterans, Florida National Guard members, reservists, and Gold Star parents and legal guardians.[10] In addition, beginning in 2014, private sector employers in Florida were authorized to establish a veterans' preference process for honorably discharged veterans and certain spouses.[11]

Currently, Florida law does not provide a policy for state agencies concerning the recruitment of employees who are veterans. However, the law specifically requires all state government entities, counties, cities, towns, villages, special tax school districts, and special districts (government employers) to grant employment preference in hiring and retention to certain veterans, and

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[1] Section 1.01(14), F.S.
[2] U.S. Census Bureau, *A Snapshot of Our Nation's Veterans*, available at: http://www.census.gov/library/infographics/veterans.html
[3] Florida Department of Veterans' Affairs, *Fast Facts*, available at: http://floridavets.org/?page_id=50
[4] U.S. Department of Veterans Affairs, Veterans Benefits Administration, Annual Benefits Report, Fiscal Year 2014, page 22 of 80, available at: http://www.benefits.va.gov/REPORTS/abr/ABR-IntroAppendix-FY13-09262014.pdf
[5] See Florida Department of Economic Opportunity, *Local Area Unemployment Statistics*, available at: http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/local-area-unemployment-statistics
[6] United States Congress Joint Economic Committee, *Economic Snapshot: Florida* (Oct. 2015), available at: http://www.jec.senate.gov/public/_cache/files/2cb3bde9-27db-4584-86fc-f2ce46e4bb2e/florida.pdf
[7] Id.
[8] Section 1, ch. 24201, L.O.F. (1947).
[9] Yates v. Rezeau, 62 So.2d 726, 727 (Fla. 1952); Ch. 98-33, at 244, L.O.F.
[10] ch. 2014-1, L.O.F.
[11] Section 295.188, F.S.

family members of certain military servicemembers and veterans.[12] All advertisements and written job announcements must include notice that veterans and eligible family members receive preference in employment and are encouraged to apply for the position.[13]

Florida's veterans' preference in employment statutes does not require a government employer to hire a veteran over a more qualified non-veteran.[14] In addition, a potential government employer is not required to pass a person who is eligible for veterans' preference through the screening process if he or she does not meet the minimum qualifications for the position.[15]

Persons Eligible for Veterans' Preference and Exceptions

Pursuant to s. 295.07, F.S., the following persons are eligible to claim veterans' employment preference:[16]

- A disabled veteran who has served on active duty in any branch of the Armed Forces and who presently has an existing service-connected disability which is compensable under public laws administered by the United States Department of Veterans Affairs (DVA) or is receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the DVA and the United States Department of Defense.
- The spouse of a veteran:
  - Who has a total and permanent service-connected disability and who, because of this disability, cannot qualify for employment; or
  - Who is missing in action, captured in line of duty by a hostile force, or detained or interned in line of duty by a foreign government or power.
- A veteran of any war, who has served at least one day during that war time period as defined in subsection s. 1.01(14), F.S., or who has been awarded a campaign or expeditionary medal. (Active duty for training is not allowed for eligibility under this provision.)
- The unremarried widow or widower of a veteran who died of a service-connected disability.
- The mother, father, legal guardian, or unremarried widow or widower of a service member who died as a result of military service under combat-related conditions.
- A veteran as defined in s. 1.01(14), F.S.
- A current member of any reserve component of the U.S. Armed Forces or the Florida National Guard.

Florida law exempts the following government positions from the veterans' preference requirements:[17]

- Positions that are exempt from the state Career Service System, including certain legislative branch personnel, judicial branch personnel, and personnel of the Office of the Governor; however, all positions under the University Support Personnel System of the State University

[12] Section 295.07(1), F.S., requires the state and political subdivisions of the state to comply with veterans' preference requirements. Section 1.01, F.S., defines "political subdivision" as "counties, cities, towns, villages, special tax school districts, special road and bridge districts, and all other districts in the state.
[13] Section 295.065, F.S.
[14] Harris v. State, Public Employees Relations Com'n., 568 So.2d 475 (Fla. 1st DCA 1990).
[15] Id.
[16] Section 295.07(1)(a)-(g), F.S.
[17] Section 295.07(4)(a)-(b), F.S.

System as well as all Career Service System positions under the Florida College System and the School for the Deaf and the Blind are included;
- Positions in political subdivisions of the state which are filled by officers elected by popular vote or persons appointed to fill vacancies in such offices and the personal secretary of each officer;
- Members of boards and commissions;
- Persons employed on a temporary basis without benefits;
- Heads of departments;
- Positions that require licensure as a physician, licensure as an osteopathic physician, or licensure as a chiropractic physician; and
- Positions that require membership in the Florida Bar.

Veterans' Preference Applied when Examination Determines Qualification for Employment

If an examination is used to determine qualification for employment, points are added to the final examination score as follows:[18]

Veterans' Preference Beneficiary	Preference Points
Disabled Veteran	15
Spouse of Person With Total Disability, Missing in Action, Captured in Line of Duty, Etc.	15
Wartime Veteran	10
Un-remarried widow/widower of Person Who Died of a Service-Connected Disability	10
Gold Star Family	10
Veteran	5
National Guard/Reserve	5

In order for points to be awarded, the applicant must first obtain a qualifying score on the examination.[19]

Florida law requires each government employer to enter the names of persons eligible for preference on an appropriate register or list in accordance with their respective ratings.[20] For most positions, the names of all persons qualified to receive a fifteen-point preference whose service-connected disabilities have been rated to be 30 percent or more must be placed at the top of the appropriate register or employment list, in accordance with their respective ratings.[21] A Florida court determined that this provision gives an absolute preference for veterans to be placed at the top of the employment list only if the candidate has a 30 percent or more disability rating.[22]

[18] Section 295.08, F.S.
[19] Rule 55A-7.010(1), F.A.C.
[20] Section 295.08, F.S.
[21] Id.
[22] Harris v. State, Public Employees Relations Com'n., 568 So.2d 475 (Fla. 1st DCA 1990).

However, the court further declared that there are no statutory provisions suggesting that veterans receiving a five or ten point exam score augmentation must be hired over more qualified non-veterans.[23]

Veterans' Preference Applied when Examination Does Not Determine Qualification for Employment

If an examination is not used to determine qualifications for a position, preference is given as follows: [24]

- First preference is given to disabled veterans and the spouses of veterans who have a total and permanent service-connected disability or who are missing in action, captured in line of duty by a hostile force, or detained or interned in line of duty by a foreign government or power; and
- Second preference is given to a veteran of any war; the unremarried widow or widower of a veteran who died of a service connected disability; the mother, father, legal guardian, or unremarried widow or widower of a service member who died as a result of military service under combat-related conditions; a veteran as defined in section s. 1.01(14), F.S., and a current member of any reserve component of the U.S. Armed Forces or the Florida National Guard.

State Government Veterans' Preference Provision

With respect to non-exempt positions in the state's career service system, Florida law requires the state to grant a preference in hiring and retention to an eligible person if the eligible person meets the minimum eligibility requirements for the position and has the knowledge, skills, and abilities required for the position.[25] A disabled veteran employed as the result of being placed at the top of the appropriate employment list must be appointed for a probationary period of one year.[26] At the end of one year, if the disabled veteran's performance is satisfactory, the veteran will acquire permanent employment status and will be subject to the employment rules of the DMS and the veteran's employing agency.[27]

State Equal Employment Policy

Section 110.112, F.S., declares that the policy of the state is to afford equal employment opportunities through programs of affirmative and positive action allowing for the full utilization of women and minorities. Each executive agency is required to develop and implement an affirmative action plan; [28] establish annual goals in its affirmative action plan for ensuring full

[23] Id.
[24] Section 295.085, F.S.
[25] Section 110.2135(1), F.S.
[26] Section 110.2135(2), F.S.
[27] Id.
[28] Section 110.112(2)(a), F.S.

utilization of groups underrepresented in the agency's workforce as compared to the relevant labor market; [29] and appoint an affirmative action-equal employment opportunity officer.[30]

Section 110.201(5), F.S., requires the DMS to develop an annual workforce report that contains data representative of the state's human resources.[31] The DMS is also required to include in its annual workforce report information relating to each executive agency's affirmative action plan.[32]

III. Effect of Proposed Changes:

This bill amends s. 295.07, F.S., to require each state agency and authorize political subdivisions of the state to develop and implement a written veterans' recruitment plan to establish annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce. These veterans' recruitment plans apply to veterans and their family members who are eligible for veterans' employment preference identified in s. 295.07(1), F.S.

The bill requires the DMS to annually collect and publish on its website and include in its annual workforce report statistical data for each state agency on the following:

- The number of persons who claim veterans' preference;
- The number of persons who are hired through the veterans' preference; and
- The number of persons who are hired as a result of the veterans' recruitment plan.

The bill also updates cross references in ss. 295.085 and 295.09, F.S.

The bill takes effect on October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[29] Section 110.112(2)(b), F.S

[30] Section 110.112(2)(c), F.S., provides that the duties of the affirmative action-equal employment opportunity officer include "determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action."

[31] DMS State Personnel Annual Workforce Report Fiscal Year 2013-2014, Equal Employment Opportunity/Affirmative Action Report page 62, available at: http://www.dms.myflorida.com/content/download/113500/629140/file/FY%2013-14%20Annual%20Workforce%20Report.pdf.

[32] Section 110.112(2)(d), (e), and (6), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1538 may provide a positive fiscal impact to veterans in the state. Recruiting veterans to the state's government workforce will likely increase the number of veterans that obtain gainful employment.

C. Government Sector Impact:

The bill has an indeterminate negative fiscal impact to the state and local governments. The cost for state agencies to develop and implement a veterans' recruitment plan is unknown but most likely insignificant and may be handled within existing resources.

The fiscal impact to the DMS is indeterminate. The cost for the DMS to collect the required statistical data for all state agencies, annually update the data on its website, and include the data in its annual workforce report is unknown, but may be insignificant. In addition, the DMS states the bill may require People First programming modifications in order to capture the specified data.[33] These additional costs could be handled within existing resources or requested in the agency's legislative budget request.

Allowing each political subdivision of the state to develop and implement a written veterans' recruitment plan may create an indeterminate negative fiscal impact to these political subdivisions. However, this is an authorization for the political subdivisions to do so, not a requirement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 295.07, 295.085, and 295.09.

[33] Email from Ricky Moulton, Department of Management Services, Re: CS/HB 1219, which is similar to CS/SB 1538 (Feb. 4, 2016) (on file with the Appropriations Subcommittee on General Government staff).

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 Military and Veterans Affairs, Space, and Domestic Security on January 26, 2016:
The CS:

- Relocates the bill's veterans recruitment plan provisions to the existing veterans preference statute (s. 295.07);
- Allows political subdivisions to develop veteran's recruitment plans.
- Removes the requirement that each executive agency appoint a veterans employment officer;
- Removes training requirements for the DMS and executive agencies relating to recruitment and employment of veterans;
- Provides that an agency's veterans recruitment plan will apply to veterans and their family members who are eligible for state veterans' preference; and
- Requires the DMS to collect statistical data on the effectiveness and utilization of veterans' preference and veteran recruitment practices.

B. Amendments:

None.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Evers

583-02600-16 20161538c1

A bill to be entitled

An act relating to veterans employment; amending s. 295.07, F.S.; requiring each state agency and authorizing other political subdivisions of the state to develop and implement a veterans recruitment plan; requiring specified goals for veterans recruitment plans; requiring the Department of Management Services to collect specified data and to include the data in its annual workforce report and on its website; amending ss. 295.085 and 295.09, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsection (4) of section 295.07, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

295.07 Preference in appointment and retention.—

(4)(a) Each state agency shall, and political subdivisions of the state may, develop and implement a written veterans recruitment plan that establishes annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce. Each veterans recruitment plan must be designed to meet the established goals.

(b) The Department of Management Services shall collect statistical data for each state agency on the number of persons who claim veterans' preference, the number of persons who are hired through the veterans' preference, and the number of persons who are hired as a result of the veterans recruitment plan. The department shall annually update the statistical data on its website and include it in its annual workforce report.

583-02600-16 20161538c1

(c) For purposes of this subsection, a veterans recruitment plan applies to veterans and their family members identified in subsection (1).

Section 2. Section 295.085, Florida Statutes, is amended to read:

295.085 Positions for which a numerically based selection process is not used.—In all positions in which the appointment or employment of persons is not subject to a written examination, with the exception of positions that are exempt under s. 295.07(5) ~~s. 295.07(4)~~, first preference in appointment, employment, and retention shall be given by the state and political subdivisions in the state to a person included under s. 295.07(1)(a) or (b), and second preference shall be given to a person included under s. 295.07(1)(c), (d), (e), (f), or (g) who possess the minimum qualifications necessary to discharge the duties of the position involved.

Section 3. Paragraph (a) of subsection (1) of section 295.09, Florida Statutes, is amended to read:

295.09 Reinstatement or reemployment; promotion preference.—

(1)(a) When an employee of the state or any of its political subdivisions employed in a position subject or not subject to a career service system or other merit-type system, with the exception of those positions which are exempt pursuant to s. 295.07(5) ~~s. 295.07(4)~~, has served in the Armed Forces of the United States and is discharged or separated therefrom with an honorable discharge, the state or its political subdivision shall reemploy or reinstate such person to the same position that he or she held prior to such service in the armed forces,

or to an equivalent position, provided such person returns to the position within 1 year of his or her date of separation or, in cases of extended active duty, within 1 year of the date of discharge or separation subsequent to the extension. Such person shall also be awarded preference in promotion and shall be promoted ahead of all others who are as well qualified or less qualified for the position. When an examination for promotion is utilized, such person shall be awarded preference points, as provided in s. 295.08, and shall be promoted ahead of all those who appear in an equal or lesser position on the promotional register, provided he or she first successfully passes the examination for the promotional position.

Section 4. This act shall take effect October 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 Appropriations

BILL:	PCS/CS/SB 1604 (141410)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Health Policy Committee; and Senator Grimsley
SUBJECT:	Drugs, Devices, and Cosmetics
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
3.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1604 updates the Florida Drug and Cosmetic Act (Act) to bring it into conformity with the federal Food, Drug and Cosmetic Act (federal act). Recent amendments to the federal act preempted Florida's regulatory structure. The bill replaces provisions relating to pedigree papers with federal requirements for a transaction history, transaction information, or transaction statement for certain recordkeeping for the manufacture and distribution of prescription drugs. Certain activities are exempted from the definition of wholesale distribution in order to conform regulatory oversight in Florida to the federal regulatory scheme.

The bill provides for administrative efficiencies and cost savings for:

- Initial and renewal permitting for prescription drug wholesale distributors and out-of-state prescription drug wholesale distributors by eliminating the distinction between primary and secondary wholesalers and the supplemental information required of a secondary wholesaler for permitting;
- Allowing certain key personnel to submit an affidavit that information submitted on a previous personal statement remains unchanged;
- Modifying the requirement for a surety bond; and
- Authorizing the Department of Business and Professional Regulation (DBPR) to contract with a vendor or enter into interagency agreements for electronic fingerprinting.

The bill establishes a nonresident prescription drug repackager permit, along with the requirement to obtain such a permit if a repackager located outside the state distributes its repackaged prescription drugs into the state. This repackager is also required to comply with provisions applicable to prescription drug manufacturers. The DBPR must establish a virtual prescription drug manufacturer permit and a virtual out-of-state prescription drug manufacturer permit for manufacturers that do not physically manufacture and possess their prescription drugs.

The DBPR is also authorized to issue non-disciplinary citations for violations of the Act for which there is no substantial threat to the public health, safety, or welfare.

The bill has an indeterminate, but most likely insignificant, fiscal impact on state funds.

This bill is effective July 1, 2016.

II. Present Situation:

The Florida Drug and Cosmetic Act (Act) is found in ch. 499, F.S. The purpose of the Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The DBPR is responsible for regulating and enforcing the Act and is specifically charged with administering and enforcing the Act to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.[1]

In 2003, the Legislature enacted the Prescription Drug Protection Act,[2] which put in place strong safeguards for the distribution of prescription drugs in, into, and from this state. This legislation was predicated on the findings and recommendations of the report of the Seventeenth Statewide Grand Jury in its First Interim Report to the Legislature.[3] That grand jury was called to examine, among other matters, the safety of prescription drugs in Florida. In particular, they examined the situation concerning the sale and re-sale of prescription drugs in the wholesale market.

The Prescription Drug Protection Act required prescription drug wholesalers to provide pedigree papers (a transaction history for tracing a prescription drug through the market) for the wholesale distribution of prescription drugs, strengthened permitting requirements for prescription drug wholesale distributors, especially for wholesale distributors that did not purchase directly from drug manufacturers (referred to as secondary wholesalers), and established significant criminal penalties for prescription drug violations related to counterfeiting and diversion.

In 2013, the Drug Quality and Security Act (DQSA) amended the federal act. The DQSA established a uniform national policy for product tracing and other requirements relating to the prescription drug supply chain. The DQSA expressly preempted states from establishing or continuing in effect any requirements for tracing products through the distribution system which are inconsistent with, more stringent than, or in addition to, any requirement applicable under DQSA. The preemption also included prohibiting states from establishing or continuing any standards, requirements, or regulations with respect to wholesale prescription drug distributor or

[1] *See* s 499.002, F.S.
[2] *See* ch. 2003-155, L.O.F.
[3] The report is available at: http://myfloridalegal.com/grandjury17.pdf (last visited Jan. 24, 2016).

third-party logistics provider licensure that are inconsistent with, less stringent than, directly related to, or covered by the standards and requirements of the DQSA.[4]

III. Effect of Proposed Changes:

Section 1 amends s. 499.003, F.S., to revise definitions to conform to the changes made to the Florida Drug and Cosmetic Act in this bill. New definitions are provided for: "active pharmaceutical ingredient"[5] and "affiliate." The following definitions are repealed: "affiliated group," "authenticate," "drop shipment," "normal distribution chain," "pedigree paper," "primary wholesale distributor," and "secondary wholesale distributor." The following definitions are substantially revised:

- "Distribute" means to sell, purchase, trade, deliver, handle, store, or receive. The term does not mean to administer or dispense. Deleted from the definition is the concept of offering to perform any of these activities and the method of distribution, i.e., by passage of title, physical movement, or both. The exemption for billing and invoicing activities is also deleted from the definition, but is addressed as an exception to the definition of wholesale distribution.
- "Manufacturer" is reworded to more accurately describe co-licensed partners and private label distributors. Third party logistics (TPL) providers are deleted from the definition.
- "Wholesale distribution" is clarified that the term includes both the distribution to a person and the receipt by a person, of a prescription drug, other than the consumer or patient. The exceptions to wholesale distribution are expanded and revised. Drug shortages not caused by a public health emergency are not deemed an emergency medical reason for the distribution of a prescription drug by a retail pharmacy. This provision is found in rule, but is now specifically addressed in statute. New exclusions from the definition of wholesale distribution include:
  - Intracompany distribution between members of an affiliate or within a manufacturer;
  - Distribution of a prescription drug by the manufacturer of that prescription drug;
  - Distribution of a prescription drug by a TPL provider in accordance with state and federal law if the TPL provider does not own the drug;
  - Distribution of, or offer to distribute, a prescription drug by an repackager that is registered under the federal act that owned or possessed the drug and which repackaged it;
  - The purchase or other acquisition by a dispenser, hospital, or other health care entity for use by that dispenser, hospital, or other health care entity;
  - Distribution of a prescription drug for the purpose of repacking the drug owned by a hospital for the hospital's use or other health care entity that is under common control with the hospital;
  - Distribution of minimal quantities of prescription drugs by a retail pharmacy to a licensed practitioner for office use in compliance with the Florida Pharmacy Act and its rules;
  - Distribution of an intravenous prescription drug that is intended for replenishment of fluids and electrolytes, or to maintain the equilibrium of water and minerals in the body;
  - Distribution of a prescription drug that is intended for irrigation or sterile water;
  - Distribution of exempt medical convenience kits;

[4] *See* sec. 585 of the Food, Drug, and Cosmetic Act.
[5] The definition of "active pharmaceutical ingredient" is moved from within the definition of "drug."

  - Transport by a common carrier if it does not own the prescription drug;
  - Saleable returns when conducted by a dispenser;
  - Facilitating the distribution of a prescription drug by providing solely administrative services;
  - Distribution of a specially-priced or donated prescription drug by a charitable organization to a licensed health care practitioner, health care clinic permitted pursuant to the Act, or to the Department of Health (DOH) or other governmental health care entity for providing emergency medical services, if the distributor and recipient receive no direct or indirect financial benefit other than tax benefits for charitable contributions; and
  - Distribution of a medical gas in compliance with part III of the Act.
- "Wholesale distributor" means a person other than a manufacturer, a manufacturer's co-licensed partner, a TPL provider, or a repackager, who is engaged in wholesale distribution.

Sections 2, 3, 4, and 20 amend s. 499.005, F.S., relating to prohibited acts; s. 499.0051, F.S., relating to criminal acts; s. 499.006, F.S., relating to adulterated drug or device; and s. 921.0022, F.S., relating to the criminal punishment code. The bill removes references to Florida's pedigree requirements throughout chapter 499, F.S. In addition, the bill replaces the references to "pedigree papers" with references to "transaction history", "transaction information", or "transaction statement" to conform to federal requirements, the federal pre-emption of individual state regulation pertaining to certain recordkeeping for the manufacture and distribution of prescription drugs, and changes made by this bill.

Section 5 amends s. 499.01, F.S., relating to permits to:
- Add a nonresident prescription drug repackager permit. This permit is required for any person located outside Florida but within the United States or its territories that repackages prescription drugs and distributes them into Florida. This permittee is required to comply with all provisions and rules that are applicable to prescription drug manufacturers and must be registered as a drug establishment with the federal Food and Drug Administration (FDA).
- Require the DBPR to adopt rules for issuing a virtual prescription drug manufacturer permit and virtual nonresident prescription drug manufacturer permit to a person that manufactures prescription drugs but does not make or take physical possession of any prescription drugs, for example when a contract manufacturer is used. Because these manufacturers do not possess prescription drugs, the DBPR is authorized to exempt them by rule from certain establishment, security, and storage requirements.
- Delete the $100,000 security bond requirement for prescription drug wholesalers and out-of-state prescription drug wholesaler; however a similar, less costly requirement is added to s. 499.012, F.S.
- Require an out-of-state prescription drug wholesaler, a TPL provider, or a nonresident prescription drug manufacturer distributing prescription drug active pharmaceutical ingredients into the state for the manufacture of an approved drug or biologic, which is not licensed by its resident state, to be licensed or registered under the federal act and for the recipient in Florida to maintain documentation of the supplier's compliance.
- Conform requirements of various permits to the repeal of the pedigree paper requirements.
- Remove the restriction that the exemption from permitting for a nonresident prescription drug manufacturer to distribute prescription drug active pharmaceutical ingredients for research is applicable only if the distributions are in limited quantities, require that the label

of a prescription drug active pharmaceutical ingredient bear specific caution statement terminology, and require that a prescription drug manufacturer that obtains an active pharmaceutical ingredient from an exempt manufacturer maintain certain records detailing the specific clinical trials or biostudies for which the ingredient was obtained.

- Exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with current state and federal current good manufacturing practices relating to repackaging. Alternate provisions are made for the labeling of those prescription drugs.

Section 6 amends s. 499.012, F.S., relating to permit application requirements to:

- Clarify that a prescription drug manufacturer permit may be issued to the same address as a licensed nuclear pharmacy, even if the nuclear pharmacy holds a special sterile compounding permit under the Florida Pharmacy Act.
- Authorize the Department of Business and Professional Regulation (DBPR) to issue a retail pharmacy drug wholesale distributor permit to the address of a community pharmacy, even if the community pharmacy holds a special sterile compounding permit, as long as the community pharmacy is not a closed pharmacy.
- Provide that applications pending resolution of a deficiency after two years from the time the DBPR notified the applicant of the deficiency automatically expire.
- Require the DBPR to maintain trade secret information submitted in an application as trade secret.
- Authorize the issuance of four-year permits on selected permit types identified in rule.
- Authorize the DBPR to send a permit renewal notification at least 90 days before the expiration date of all permits which conspicuously notes the expiration date of the permit and that the establishment may not operate unless the permit is renewed timely. The renewal notification will eliminate the costs associated with sending the renewal application.
- For a prescription drug wholesale distributor or out-of-state prescription drug wholesale distributor permit:
    - Require a $100 delinquent fee for a renewal application that is submitted later than 45 days prior to the permit's expiration date.
    - Substitute submission of the applicant's gross annual receipts attributable to prescription drug wholesale distribution activities for the previous tax year in lieu of more extensive information pertaining to prescription drug sales during certain intermediate timeframes and annually, purchases directly from manufacturers for renewal permits, and estimated information for new applicants.
    - Allow a surety bond issued in this state or any other state or other equivalent security such as an irrevocable letter of credit, or a deposit in a trust account or financial institution, which includes the state as a beneficiary, to satisfy the bond requirement. The amount of the surety bond is tiered based on the applicant's annual gross receipts. A bond of $100,000 is applicable if the annual gross receipts of the applicant's previous tax year is over $10 million, or $25,000 if the annual gross receipts is $10 million or less.
    - Repeal the additional information required to be submitted by secondary wholesalers (wholesalers that did not purchase directly from manufacturers) since the concept of primary wholesale distributor and secondary wholesale distributor is eliminated in this bill.

- Require proof of establishment inspection by the DBPR, the FDA, or another governmental entity. The DBPR may recognize the inspection conducted by another state if that state's laws are substantially equivalent to the laws in Florida.
- Authorize the DBPR to contract with a vendor or enter into interagency agreements to handle electronic fingerprinting.
- Streamline the renewal requirements for the submission of a personal information statement for certain key individuals by allowing submission of a certification under oath that the most recently submitted statement submitted to the DBPR remains unchanged.

Section 7 amends s. 499.01201, F.S., to make conforming changes by removing obsolete references to the pedigree statutes in ch. 499, F.S.

Section 8 amends s. 499.0121, F.S., relating to the storage and handling of prescription drugs to conform changes associated with the repeal of the pedigree paper requirements and to include standards for active pharmaceutical ingredients that apply to other prescription drugs. This section is also amended to increase the number of unit doses, from 5,000 to 7,500 unit doses, of any one controlled substance that may be ordered during a one-month period before triggering an assessment by the wholesaler as to whether the purchase of that controlled substance is reasonable.

Section 9 amends s. 499.015, F.S., relating to registration of drugs, devices, and cosmetics to synchronize the expiration date of product registrations with the expiration date of the applicable manufacturing or repacking permit.

Section 13 amends s. 499.066, F.S., relating to penalties, to authorize the DBPR to adopt rules identifying low-risk violations of the act and applicable penalties, including monetary assessments and other remedial measures, for which a non-disciplinary citation may be issued. The person to whom a citation is issued may choose, in lieu of accepting the citation, to have the matter investigated more fully and processed according to the full procedures for violations of the Act in which discipline may be imposed. The low-risk violation are ones for which there is no substantial threat to the public health, safety, or welfare.

Section 14 amends s. 499.82, F.S., relating to definitions under ch. 499, Part III, F.S., (medical gas). Specifically, s. 499.82, F.S., amends the definition of "wholesale distribution" to clarify that the exceptions to wholesale distribution listed in the federal act – including the distribution of medical gases – are not included in the exemptions to wholesale distribution in Florida as that term relates to medical gases.

Sections 10, 11, 12, 15, 17, 18, and 19 amend s. 499.03, F.S., relating to possession of prescription drugs, s. 499.05, F.S., relating to rules, s. 499.051, F.S., relating to inspections and investigations, s. 499.89, F.S., relating to recordkeeping, s. 409.9201, F.S., relating to Medicaid fraud, s. 499.067, F.S., relating to denial, suspension or revocation of permit, certification, or registration, and s. 794.075, F.S., relating to sexual predators, respectively, to conform these sections of law to changes made in the bill.

Section 16 repeals s. 499.01212, relating to pedigree papers.

Section 21 provides that the effective date of the act is July 1, 2016.

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:

PCS/CS/SB 1604 updates and conforms the regulations for the distribution of prescription drugs in or into this state and eliminates potential ambiguity between Florida's requirements and a uniform national approach. This uniformity should generate savings by regulated persons. Other changes to permit application submission requirements may streamline initial and renewal administrative paperwork, resulting in efficiencies in time and costs. Anecdotal information received from multiple wholesale distributors suggests that the annual submission of the renewal application consumes approximately 40 hours.

Cost savings associated with the reduction of information that is required to be provided in distributor permit applications and renewals could result in an estimated annual savings of $225,379 to the industry each year and an estimated saving of $1,105 per year per permittee.[6]

Allowing a surety bond that was obtained for licensure in another state to satisfy Florida's requirement for a surety bond for prescription drug wholesale distributors and out-of-state wholesale distributors will generate a cost saving of $100,000 per qualifying permit. The tiered surety bond requirement may also help small businesses.

C. Government Sector Impact:

The bill provides for administrative efficiencies for the Department of Business and Professional Regulations (DBPR) in the regulation and enforcement of the Act which will

[6] *See* DBPR, *Senate Bill 1604 Analysis*, p. 13, (on file with the Senate Committee on Health Policy).

generate cost savings. The DBPR will annually save $579 in postage from changes to the process for renewal of permits.[7] The DBPR will incur costs for technology changes in order to implement this Act; however, these costs can be absorbed within existing resources.

The bill amends ch. 499, F.S., to bring the statutes into conformity with the federal act, which has three permits not in current Florida law: nonresident repackager, virtual prescription drug manufacturer, and nonresident virtual prescription drug manufacturer. The entities that fall into these three new permits are already issued another type of permit by the DBPR. Under the bill, these permittees will be reclassified into the new permits and will not be charged a second time for the current permits. There will be no increased costs to the industry or increase in revenue to the DBPR.[8] These three new permits will impose an initial registration fee of $1,500 and a biennial registration fee of $1,500.[9] The current biennial fees for the virtual prescription drug manufacturer and the nonresident prescription drug manufacturer are $1,500; therefore, the cost will remain the same for these entities. The current biennial fee for the nonresident repackager is $1,600, as these entities are currently permitted as an out-of-state prescription drug wholesale distributor. The $100 difference in this fee is negligible, as the DBPR does not believe that there is a significant number of entities to whom this would apply.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill exempts the distribution of minimal quantities of prescription drugs by a retail pharmacy for office use in compliance with the Florida Pharmacy Act and its rules from the definition of wholesale distribution. However, the requirement for a retail pharmacy drug wholesale distributor permit is still required in s. 499.01(2)(g), F.S., for a retail pharmacy that engages in the wholesale distribution of prescription drugs to practitioners of up to 30 percent of the pharmacy's total annual prescription drug purchases. It is not apparent how these two sections of law are intended to co-exist and additional legislative direction may be warranted.

Lines 1580-1589 exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with *all* current state and federal current good manufacturing practices relating to repackaging. This may be overly broad and might create unreasonable risks for persons receiving those drugs in the rural hospital. Also, this provision may be read as exempting compliance with current good manufacturing practices for all repacked and distributed prescription drugs to all health care entities if at least one of the recipients is a rural hospital.

[7] *Id*.
[8] *Id.*
[9] *Id*.
[10] *Id*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 499.003, 499.005, 499.0051, 499.006, 499.01, 499.012, 499.01201, 499.0121, 499.015, 499.03, 499.05, 499.051, 499.066, 499.82, 499.89, 409.9201, 499.067, 794.075, and 921.0022.

This bill repeals section 499.01212 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 General Government on February 11, 2016:
The committee substitute:

- Increases the number of unit doses, from 5,000 to 7,500 unit doses, of any one controlled substance that may be ordered during a one-month period before triggering an assessment by the wholesaler as to whether the purchase of that controlled substance is reasonable; and
- Specifies the equivalent security provided in lieu of a surety bond must include the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund within the DBPR.

CS by Health Policy on January 26, 2016:
The CS corrects a reference to a prescription drug manufacturer distributing their prescription drugs as opposed to engaging in the wholesale distribution of those drugs to comport with the federal act. The CS also reinstates the mandatory registration of cosmetic products manufactured in this state.

B. Amendments:

None.

389370

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete line 655

and insert:

thereunder. The department shall adopt rules specifying the quantities of prescription drugs which are considered to be minimal quantities. However, until such rules are adopted, minimal quantities distributed may not exceed 3 percent of the retail pharmacy's total annual purchases of prescription drugs.

389370

========== 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:
and Cosmetic Act; requiring rulemaking; specifying a default rule until the Department of Business and Professional Regulation adopts a rule; amending s. 499.005, F.S.; revising

308272

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 1167 and 1168
insert:

5. A restricted prescription drug distributor permit is not required for distributions between pharmacies that each hold an active permit under chapter 465, have a common ownership, and are operating in a freestanding end-stage renal dialysis clinic, if such distributions are made to meet the immediate emergency

308272

medical needs of specifically identified patients and do not occur with such frequency as to amount to the regular and systematic supplying of that drug between the pharmacies. The department shall adopt rules establishing when the distribution of a prescription drug under this subparagraph amounts to the regular and systematic supplying of that drug.

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

And the title is amended as follows:

Delete line 28

and insert:

prescription drug wholesale distributor permit; providing that a restricted prescription drug distributor permit is not required for distributions between certain pharmacies; requiring the Department of Business and Professional Regulation to establish by rule when such distribution constitutes regular and systematic supplying of a prescription drug;

338814

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1592 - 1594

and insert:

prescription drugs. The department shall adopt rules to ensure the safety and integrity of prescription drugs repackaged and distributed under this subsection, including rules regarding prescription drug manufacturing and labeling requirements.

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

338814

And the title is amended as follows:

Delete line 36

and insert:

they repackage prescription drugs; requiring the department to adopt rules concerning repackaged prescription drug safety and integrity; amending s.

847704

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2374 - 2421

and insert:

(a) The following persons must maintain business records that include the information specified in paragraph (b) ~~Wholesale distributors must establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records must provide a complete audit trail from receipt to sale~~

847704

~~or other disposition, be readily retrievable for inspection, and include, at a minimum, the following information~~:

1. Persons permitted or required to be permitted under chapter 499 to engage in the manufacture, repackaging, or distribution of active pharmaceutical ingredients or prescription drugs. ~~The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;~~

2. Persons other than those set forth in subparagraph 1. that engage in the receipt of active pharmaceutical ingredients or prescription drugs. ~~The name, principal address, and state license permit or registration number of the person authorized to purchase prescription drugs;~~

~~3. The name, strength, dosage form, and quantity of the drugs received and distributed or disposed of;~~

~~4. The dates of receipt and distribution or other disposition of the drugs; and~~

~~5. Any financial documentation supporting the transaction.~~

(b) Business records for persons specified in paragraph (a) must include:

1. The name and address of the seller, and the Florida permit number of the seller if such seller is not exempt from Florida permitting requirements, of the active pharmaceutical ingredient or prescription drug.

2. The address of the location the active pharmaceutical ingredient or prescription drug was shipped from.

3. The distribution date of the active pharmaceutical ingredient or prescription drug.

4. The name, strength, and quantity, and the National Drug

847704

Code if such code has been assigned, of the distributed active pharmaceutical ingredient or prescription drug.

5. The name and Florida permit number of the person that purchased the active pharmaceutical ingredient or prescription drug.

6. The financial data, including the unit type and unit price, for the distributions involving active pharmaceutical ingredients or prescription drugs.

7. The date and method of disposition of the active pharmaceutical ingredient or prescription drug. ~~Inventories and records must be made available for inspection and photocopying by authorized federal, state, or local officials for a period of 2 years following disposition of the drugs or 3 years after the creation of the records, whichever period is longer.~~

(c) Each manufacturer or repackager of medical devices, over-the-counter drugs, or cosmetics must maintain business records that include:

1. The name and address of the seller or transferor of the product.

2. The address of the location the product was shipped from.

3. The date of the sale or distribution of the product.

4. The name and quantity of the product involved.

5. The name and address of the person who purchased the product ~~Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means must be readily available for authorized inspection during the retention period. Records that are kept at a central location outside of this state and that~~

~~are not electronically retrievable must be made available for inspection within 2 working days after a request by an authorized official of a federal, state, or local law enforcement agency. Records that are maintained at a central location within this state must be maintained at an establishment that is permitted pursuant to this part and must be readily available~~.

(d) Persons permitted, or required to be permitted, under this chapter to engage in the manufacture, repackaging, or distribution of active pharmaceutical ingredients or prescription drugs; or the manufacture or repackaging of medical devices, over-the-counter drugs, and cosmetics; must establish, maintain, or have the capability to create a current inventory of the active pharmaceutical ingredients, prescription drugs, over-the-counter drugs, cosmetics, and devices at an establishment where activities specified in this paragraph are undertaken and must be able to produce such inventory for inspection by the department within 2 business days ~~Each manufacturer or repackager of medical devices, over-the-counter drugs, or cosmetics must maintain records that include the name and principal address of the seller or transferor of the product, the address of the location from which the product was shipped, the date of the transaction, the name and quantity of the product involved, and the name and principal address of the person who purchased the product~~.

(e) Business records required to be kept pursuant to this section, and that are kept at the inspection site or can be immediately retrieved by computer or other electronic means, must be readily available for authorized inspection during the

847704

retention period. Records kept at a central location outside of this state which are not electronically retrievable must be made available for inspection within 2 working days after a request by an authorized official of a federal, state, or local law enforcement agency. Records maintained at a central location within this state must be maintained at an establishment that is permitted pursuant to this part and such records must be readily available for inspection ~~When pedigree papers are required by this part, a wholesale distributor must maintain the pedigree papers separate and distinct from other records required under this part~~.

(f) Records required to be kept pursuant to this subsection must be maintained as specified for a period of not less than 6 years from the date of disposition of the active pharmaceutical ingredients, prescription drugs, over-the-counter drugs, medical devices, or cosmetics.

(g) To the extent that prescription drugs are also products as defined in the federal act, as amended, and the information required by the business records requirements of this section are also included in the tracking and tracing requirements of the federal act, as amended, and departmental rules, the manufacturer, wholesale distributor, repackager, or dispenser must follow both the requirements of the federal act, as amended, and departmental rules.

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

And the title is amended as follows:

Delete lines 64 - 66

and insert:


847704

recordkeeping requirements; specifying recordkeeping requirements for manufacturers and repackagers of medical devices, over-the-counter drugs, and cosmetics; increasing the quantity of unit doses of


141410

576-03423-16

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

A bill to be entitled

An act relating to drugs, devices, and cosmetics; amending s. 499.003, F.S.; providing, revising, and deleting definitions for purposes of the Florida Drug and Cosmetic Act; amending s. 499.005, F.S.; revising prohibited acts related to the distribution of prescription drugs; conforming a cross-reference; amending s. 499.0051, F.S.; prohibiting the distribution of prescription drugs without delivering a transaction history, transaction information, and transaction statement; providing penalties; deleting provisions and revising terminology related to pedigree papers, to conform to changes made by the act; amending s. 499.006, F.S.; conforming provisions; amending s. 499.01, F.S.; requiring nonresident prescription drug repackagers to obtain an operating permit; authorizing a manufacturer to engage in the wholesale distribution of prescription drugs; providing for the issuance of virtual prescription drug manufacturer permits and virtual nonresident prescription drug manufacturer permits to certain persons; providing exceptions from certain virtual manufacturer requirements; requiring a nonresident prescription drug repackager permit for certain persons; deleting surety bond requirements for prescription drug wholesale distributors; requiring that certain persons obtain an out-of-state


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576-03423-16

prescription drug wholesale distributor permit requiring certain third party logistic providers to be licensed; requiring research and development labeling on certain prescription drug active pharmaceutical ingredient packaging; requiring certain manufacturers to create and maintain certain records; requiring certain prescription drug distributors to provide certain information to health care entities for which they repackage prescription drugs; amending s. 499.012, F.S.; providing for issuance of a prescription drug manufacturer permit or retail pharmacy drug wholesale distributor permit when an applicant at the same address is a licensed nuclear pharmacy or community pharmacy; providing for the expiration of deficient permit applications; requiring trade secret information submitted by an applicant to be maintained as a trade secret; authorizing the quadrennial renewal of permits; providing for calculation of fees for such permit renewals; revising procedures and application requirements for permit renewals; providing for late renewal fees; allowing a permittee who submits a renewal application to continue operations; removing certain application requirements for renewal of a permit; requiring bonds or other surety of a specified amount; requiring proof of inspection of establishments used in wholesale distribution; authorizing the Department of Business and Professional Regulation to contract for the collection of electronic fingerprints under certain

circumstances; providing information that may be submitted in lieu of certain application requirements for specified permits and certifications; removing provisions relating to annual renewal and expiration of permits; conforming cross-references; amending s. 499.01201, F.S.; conforming provisions; amending s. 499.0121, F.S.; revising prescription drug recordkeeping requirements; requiring inventories and records of transactions for active pharmaceutical ingredients; increasing the quantity of unit doses of a controlled substance that may be ordered in any given month by a customer without triggering a requirement that a wholesale distributor perform a reasonableness assessment; conforming provisions; amending s. 499.015, F.S.; providing for the expiration, renewal, and issuance of certain drug, device, and cosmetic product registrations; providing for product registration fees; amending ss. 499.03, 499.05, and 499.051, F.S.; conforming provisions to changes made by the act; amending s. 499.066, F.S.; authorizing the issuance of nondisciplinary citations; authorizing the department to adopt rules designating violations for which a citation may be issued; authorizing the department to recover investigative costs pursuant to the citation; specifying a time limitation for issuance of a citation; providing for service of a citation; amending s. 499.82, F.S.; revising the definition of "wholesale distribution" for purposes of medical gas requirements; amending s.

499.89, F.S.; conforming provisions; repealing s. 499.01212, F.S., relating to pedigree papers; amending ss. 409.9201, 499.067, 794.075, and 921.0022, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 499.003, Florida Statutes, is amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(1) "Active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or animals.

(2) ~~(1)~~ "Advertisement" means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

(3) "Affiliate" means a business entity that has a relationship with another business entity in which, directly or indirectly:

(a) The business entity controls, or has the power to

control, the other business entity; or

(b) A third party controls, or has the power to control, both business entities.

~~(2) "Affiliated group" means an affiliated group as defined by s. 1504 of the Internal Revenue Code of 1986, as amended, which is composed of chain drug entities, including at least 50 retail pharmacies, warehouses, or repackagers, which are members of the same affiliated group. The affiliated group must disclose the names of all its members to the department.~~

(4) ~~(3)~~ "Affiliated party" means:

(a) A director, officer, trustee, partner, or committee member of a permittee or applicant or a subsidiary or service corporation of the permittee or applicant;

(b) A person who, directly or indirectly, manages, controls, or oversees the operation of a permittee or applicant, regardless of whether such person is a partner, shareholder, manager, member, officer, director, independent contractor, or employee of the permittee or applicant;

(c) A person who has filed or is required to file a personal information statement pursuant to s. 499.012(9) or is required to be identified in an application for a permit or to renew a permit pursuant to s. 499.012(8); or

(d) The five largest natural shareholders that own at least 5 percent of the permittee or applicant.

(5) ~~(4)~~ "Applicant" means a person applying for a permit or certification under this part.

~~(5) "Authenticate" means to affirmatively verify upon receipt of a prescription drug that each transaction listed on the pedigree paper has occurred.~~

~~(a) A wholesale distributor is not required to open a sealed, medical convenience kit to authenticate a pedigree paper for a prescription drug contained within the kit.~~

~~(b) Authentication of a prescription drug included in a sealed, medical convenience kit shall be limited to verifying the transaction and pedigree information received.~~

(6) "Certificate of free sale" means a document prepared by the department which certifies a drug, device, or cosmetic, that is registered with the department, as one that can be legally sold in the state.

(7) "Chain pharmacy warehouse" means a ~~wholesale~~ distributor permitted pursuant to s. 499.01 that maintains a physical location for prescription drugs that functions solely as a central warehouse to perform intracompany transfers of such drugs between members of an affiliate ~~to a member of its affiliated group~~.

(8) "Closed pharmacy" means a pharmacy that is licensed under chapter 465 and purchases prescription drugs for use by a limited patient population and not for wholesale distribution or sale to the public. The term does not include retail pharmacies.

(9) "Color" includes black, white, and intermediate grays.

(10) "Color additive" means, with the exception of any material that has been or hereafter is exempt under the federal act, a material that:

(a) Is a dye pigment, or other substance, made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or

576-03423-16

(b) When added or applied to a drug or cosmetic or to the human body, or any part thereof, is capable alone, or through reaction with other substances, of imparting color thereto.

(11) "Contraband prescription drug" means any adulterated drug, as defined in s. 499.006, any counterfeit drug, as defined in this section, and also means any prescription drug for which a transaction history, transaction information, or transaction statement ~~pedigree paper~~ does not exist, or for which the transaction history, transaction information, or transaction statement ~~pedigree paper~~ in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter.

(12) "Cosmetic" means an article, with the exception of soap, that is:

(a) Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or

(b) Intended for use as a component of any such article.

(13) "Counterfeit drug," "counterfeit device," or "counterfeit cosmetic" means a drug, device, or cosmetic which, or the container, seal, or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug, device, or cosmetic manufacturer, processor, packer, or distributor other than the person that in fact manufactured, processed, packed, or distributed that drug, device, or cosmetic and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, that other

576-03423-16

drug, device, or cosmetic manufacturer, processor, packer, or distributor.

(14) "Department" means the Department of Business and Professional Regulation.

(15) "Device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including its components, parts, or accessories, which is:

(a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, or any supplement thereof,

(b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or

(c) Intended to affect the structure or any function of the body of humans or other animals,

and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(16) "Distribute" or "distribution" means to sell, purchase, trade, deliver, handle, store, or receive ~~to sell; offer to sell; give away; transfer, whether by passage of title, physical movement, or both; deliver; or offer to deliver~~. The term does not mean to administer or dispense ~~and does not include the billing and invoicing activities that commonly follow a wholesale distribution transaction~~.

~~(17) "Drop shipment" means the sale of a prescription drug from a manufacturer to a wholesale distributor, where the~~

~~wholesale distributor takes title to, but not possession of, the prescription drug, and the manufacturer of the prescription drug ships the prescription drug directly to a chain pharmacy warehouse or a person authorized by law to purchase prescription drugs for the purpose of administering or dispensing the drug, as defined in s. 465.003.~~

(17)~~(18)~~ "Drug" means an article that is:

(a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications;

(b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;

(c) Intended to affect the structure or any function of the body of humans or other animals; or

(d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. ~~For purposes of this paragraph, an "active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.~~

(18)~~(19)~~ "Establishment" means a place of business which is at one general physical location and may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

(19)~~(20)~~ "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

(20)~~(21)~~ "Freight forwarder" means a person who receives prescription drugs which are owned by another person and designated by that person for export, and exports those prescription drugs.

(21)~~(22)~~ "Health care entity" means a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or retail pharmacy licensed under state law to deal in prescription drugs. However, a blood establishment is a health care entity that may engage in the wholesale distribution of prescription drugs under s. 499.01(2)(h)1.c. ~~499.01(2)(g)1.c.~~

(22)~~(23)~~ "Health care facility" means a health care facility licensed under chapter 395.

(23)~~(24)~~ "Hospice" means a corporation licensed under part IV of chapter 400.

(24)~~(25)~~ "Hospital" means a facility as defined in s.

395.002 and licensed under chapter 395.

(25) ~~(26)~~ "Immediate container" does not include package liners.

(26) ~~(27)~~ "Label" means a display of written, printed, or graphic matter upon the immediate container of any drug, device, or cosmetic. A requirement made by or under authority of this part or rules adopted under this part that any word, statement, or other information appear on the label is not complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such drug, device, or cosmetic or is easily legible through the outside container or wrapper.

(27) ~~(28)~~ "Labeling" means all labels and other written, printed, or graphic matters:

(a) Upon a drug, device, or cosmetic, or any of its containers or wrappers; or

(b) Accompanying or related to such drug, device, or cosmetic.

(28) ~~(29)~~ "Manufacture" means the preparation, deriving, compounding, propagation, processing, producing, or fabrication of any drug, device, or cosmetic.

(29) ~~(30)~~ "Manufacturer" means:

(a) A person who holds a New Drug Application, an Abbreviated New Drug Application, a Biologics License Application, or a New Animal Drug Application approved under the federal act or a license issued under s. 351 of the Public Health Service Act, 42 U.S.C. s. 262, for such drug or biologics, or if such drug or biologics is not the subject of an approved application or license, the person who manufactured the

drug or biologics ~~prepares, derives, manufactures, or produces a drug, device, or cosmetic~~;

(b) A co-licensed partner of the person described in paragraph (a) who obtains the drug or biologics directly from a person described in paragraph (a), paragraph (c), or this paragraph ~~The holder or holders of a New Drug Application (NDA), an Abbreviated New Drug Application (ANDA), a Biologics License Application (BLA), or a New Animal Drug Application (NADA), provided such application has become effective or is otherwise approved consistent with s. 499.023~~;

(c) An affiliate of a person described in paragraph (a), paragraph (b), or this paragraph that receives the drug or biologics directly from a person described in paragraph (a), paragraph (b), or this paragraph ~~A private label distributor for whom the private label distributor's prescription drugs are originally manufactured and labeled for the distributor and have not been repackaged~~; or

(d) A person who manufactures a device or a cosmetic. ~~A person registered under the federal act as a manufacturer of a prescription drug, who is described in paragraph (a), paragraph (b), or paragraph (c), who has entered into a written agreement with another prescription drug manufacturer that authorizes either manufacturer to distribute the prescription drug identified in the agreement as the manufacturer of that drug consistent with the federal act and its implementing regulations;~~

~~(e) A member of an affiliated group that includes, but is not limited to, persons described in paragraph (a), paragraph (b), paragraph (c), or paragraph (d), which member distributes~~

~~prescription drugs, whether or not obtaining title to the drugs, only for the manufacturer of the drugs who is also a member of the affiliated group. As used in this paragraph, the term "affiliated group" means an affiliated group as defined in s. 1504 of the Internal Revenue Code of 1986, as amended. The manufacturer must disclose the names of all of its affiliated group members to the department; or~~

~~(f) A person permitted as a third party logistics provider, only while providing warehousing, distribution, or other logistics services on behalf of a person described in paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (e).~~

The term does not include a pharmacy that is operating in compliance with pharmacy practice standards as defined in chapter 465 and rules adopted under that chapter.

(30) ~~(31)~~ "Medical convenience kit" means packages or units that contain combination products as defined in 21 C.F.R. s. 3.2(e)(2).

(31) ~~(32)~~ "Medical gas" means any liquefied or vaporized gas that is a prescription drug, whether alone or in combination with other gases, and as defined in the federal act.

(32) ~~(33)~~ "New drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of that drug; or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under certain conditions, has been recognized for use under such conditions, but which drug has not, other than in those investigations, been used to a material extent or for a material time under such conditions.

~~(34) "Normal distribution chain" means a wholesale distribution of a prescription drug in which the wholesale distributor or its wholly owned subsidiary purchases and receives the specific unit of the prescription drug directly from the manufacturer and distributes the prescription drug directly, or through up to two intracompany transfers, to a chain pharmacy warehouse or a person authorized by law to purchase prescription drugs for the purpose of administering or dispensing the drug, as defined in s. 465.003. For purposes of this subsection, the term "intracompany" means any transaction or transfer between any parent, division, or subsidiary wholly owned by a corporate entity.~~

(33) ~~(35)~~ "Nursing home" means a facility licensed under part II of chapter 400.

(34) ~~(36)~~ "Official compendium" means the current edition of the official United States Pharmacopoeia and National Formulary, or any supplement thereto.

~~(37) "Pedigree paper" means a document in written or electronic form approved by the department which contains information required by s. 499.01212 regarding the sale and distribution of any given prescription drug.~~

(35) ~~(38)~~ "Permittee" means any person holding a permit issued under this chapter ~~pursuant to s. 499.012~~.

(36)~~(39)~~ "Person" means any individual, child, joint venture, syndicate, fiduciary, partnership, corporation, division of a corporation, firm, trust, business trust, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within this state, and any representative, agent, or agency of any of the foregoing, or any other group or combination of the foregoing.

(37)~~(40)~~ "Pharmacist" means a person licensed under chapter 465.

(38)~~(41)~~ "Pharmacy" means an entity licensed under chapter 465.

(39)~~(42)~~ "Prepackaged drug product" means a drug that originally was in finished packaged form sealed by a manufacturer and that is placed in a properly labeled container by a pharmacy or practitioner authorized to dispense pursuant to chapter 465 for the purpose of dispensing in the establishment in which the prepackaging occurred.

(40)~~(43)~~ "Prescription drug" means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the federal act or s. 465.003(8), s. 499.007(13), subsection (31) ~~(32)~~, or subsection (47) ~~(52)~~, except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

(41)~~(44)~~ "Prescription drug label" means any display of written, printed, or graphic matter upon the immediate container

of any prescription drug before it is dispensed ~~prior to its dispensing~~ to an individual patient pursuant to a prescription of a practitioner authorized by law to prescribe.

(42)~~(45)~~ "Prescription label" means any display of written, printed, or graphic matter upon the immediate container of any prescription drug dispensed pursuant to a prescription of a practitioner authorized by law to prescribe.

~~(46) "Primary wholesale distributor" means any wholesale distributor that:~~

~~(a) Purchased 90 percent or more of the total dollar volume of its purchases of prescription drugs directly from manufacturers in the previous year; and~~

~~(b)1. Directly purchased prescription drugs from not fewer than 50 different prescription drug manufacturers in the previous year; or~~

~~2. Has, or the affiliated group, as defined in s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member has, not fewer than 250 employees.~~

~~(c) For purposes of this subsection, "directly from manufacturers" means:~~

~~1. Purchases made by the wholesale distributor directly from the manufacturer of prescription drugs; and~~

~~2. Transfers from a member of an affiliated group, as defined in s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member, if:~~

~~a. The affiliated group purchases 90 percent or more of the total dollar volume of its purchases of prescription drugs from the manufacturer in the previous year; and~~

~~b. The wholesale distributor discloses to the department~~

~~the names of all members of the affiliated group of which the wholesale distributor is a member and the affiliated group agrees in writing to provide records on prescription drug purchases by the members of the affiliated group not later than 48 hours after the department requests access to such records, regardless of the location where the records are stored.~~

(43)~~(47)~~ "Proprietary drug," or "OTC drug," means a patent or over-the-counter drug in its unbroken, original package, which drug is sold to the public by, or under the authority of, the manufacturer or primary distributor thereof, is not misbranded under the provisions of this part, and can be purchased without a prescription.

(44)~~(48)~~ "Repackage" includes repacking or otherwise changing the container, wrapper, or labeling to further the distribution of the drug, device, or cosmetic.

(45)~~(49)~~ "Repackager" means a person who repackages. The term excludes pharmacies that are operating in compliance with pharmacy practice standards as defined in chapter 465 and rules adopted under that chapter.

(46)~~(50)~~ "Retail pharmacy" means a community pharmacy licensed under chapter 465 that purchases prescription drugs at fair market prices and provides prescription services to the public.

~~(51) "Secondary wholesale distributor" means a wholesale distributor that is not a primary wholesale distributor.~~

(47)~~(52)~~ "Veterinary prescription drug" means a prescription drug intended solely for veterinary use. The label of the drug must bear the statement, "Caution: Federal law restricts this drug to sale by or on the order of a licensed

veterinarian."

(48)~~(53)~~ "Wholesale distribution" means the distribution of a prescription drug to a person ~~drugs to persons~~ other than a consumer or patient, or the receipt of a prescription drug by a person other than the consumer or patient, but does not include:

(a) Any of the following activities, which is not a violation of s. 499.005(21) if such activity is conducted in accordance with s. 499.01(2)(h) ~~499.01(2)(g)~~:

1. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of that organization.

2. The distribution ~~sale, purchase, or trade~~ of a prescription drug or an offer to distribute ~~sell, purchase, or trade~~ a prescription drug by a charitable organization described in s. 501(c)(3) of the Internal Revenue Code of 1986, as amended and revised, to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

3. The distribution ~~sale, purchase, or trade~~ of a prescription drug ~~or an offer to sell, purchase, or trade a prescription drug~~ among hospitals or other health care entities that are under common control. For purposes of this subparagraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or otherwise.

4. The distribution ~~sale, purchase, trade, or other transfer~~ of a prescription drug from or for any federal, state,

or local government agency or any entity eligible to purchase prescription drugs at public health services prices pursuant to Pub. L. No. 102-585, s. 602 to a contract provider or its subcontractor for eligible patients of the agency or entity under the following conditions:

a. The agency or entity must obtain written authorization for the distribution ~~sale, purchase, trade, or other transfer~~ of a prescription drug under this subparagraph from the Secretary of Business and Professional Regulation or his or her designee.

b. The contract provider or subcontractor must be authorized by law to administer or dispense prescription drugs.

c. In the case of a subcontractor, the agency or entity must be a party to and execute the subcontract.

d. The contract provider and subcontractor must maintain and produce immediately for inspection all records of movement or transfer of all the prescription drugs belonging to the agency or entity, including, but not limited to, the records of receipt and disposition of prescription drugs. Each contractor and subcontractor dispensing or administering these drugs must maintain and produce records documenting the dispensing or administration. Records that are required to be maintained include, but are not limited to, a perpetual inventory itemizing drugs received and drugs dispensed by prescription number or administered by patient identifier, which must be submitted to the agency or entity quarterly.

e. The contract provider or subcontractor may administer or dispense the prescription drugs only to the eligible patients of the agency or entity or must return the prescription drugs for or to the agency or entity. The contract provider or

subcontractor must require proof from each person seeking to fill a prescription or obtain treatment that the person is an eligible patient of the agency or entity and must, at a minimum, maintain a copy of this proof as part of the records of the contractor or subcontractor required under sub-subparagraph d.

f. In addition to the departmental inspection authority set forth in s. 499.051, the establishment of the contract provider and subcontractor and all records pertaining to prescription drugs subject to this subparagraph shall be subject to inspection by the agency or entity. All records relating to prescription drugs of a manufacturer under this subparagraph shall be subject to audit by the manufacturer of those drugs, without identifying individual patient information.

(b) Any of the following activities, which is not a violation of s. 499.005(21) if such activity is conducted in accordance with rules established by the department:

1. The distribution ~~sale, purchase, or trade~~ of a prescription drug among federal, state, or local government health care entities that are under common control and are authorized to purchase such prescription drug.

2. The distribution ~~sale, purchase, or trade~~ of a prescription drug or ~~an~~ offer to distribute ~~sell, purchase, or trade~~ a prescription drug for emergency medical reasons, which may include~~. For purposes of this subparagraph, The term "emergency medical reasons" includes~~ transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage. For purposes of this subparagraph, a drug shortage not caused by a public health emergency does not constitute an emergency medical reason.

3. The distribution ~~transfer~~ of a prescription drug acquired by a medical director on behalf of a licensed emergency medical services provider to that emergency medical services provider and its transport vehicles for use in accordance with the provider's license under chapter 401.

~~4. The revocation of a sale or the return of a prescription drug to the person's prescription drug wholesale supplier.~~

4.~~5.~~ The donation of a prescription drug by a health care entity to a charitable organization that has been granted an exemption under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, and that is authorized to possess prescription drugs.

5.~~6.~~ The distribution ~~transfer~~ of a prescription drug by a person authorized to purchase or receive prescription drugs to a person licensed or permitted to handle reverse distributions or destruction under the laws of the jurisdiction in which the person handling the reverse distribution or destruction receives the drug.

6.~~7.~~ The distribution ~~transfer~~ of a prescription drug by a hospital or other health care entity to a person licensed under this part to repackage prescription drugs for the purpose of repackaging the prescription drug for use by that hospital, or other health care entity and other health care entities that are under common control, if ownership of the prescription drugs remains with the hospital or other health care entity at all times. In addition to the recordkeeping requirements of s. 499.0121(6), the hospital or health care entity that distributes ~~transfers~~ prescription drugs pursuant to this subparagraph must reconcile all drugs distributed ~~transferred~~ and returned and

resolve any discrepancies in a timely manner.

(c) Intracompany distribution of any drug between members of an affiliate or within a manufacturer.

(d) The distribution of a prescription drug by the manufacturer of the prescription drug.

(e)~~(c)~~ The distribution of prescription drug samples by manufacturers' representatives or distributors' representatives conducted in accordance with s. 499.028.

(f) The distribution of a prescription drug by a third-party logistics provider permitted or licensed pursuant to and operating in compliance with the laws of this state and federal law if such third-party logistics provider does not take ownership of the prescription drug.

(g) The distribution of a prescription drug, or an offer to distribute a prescription drug by a repackager registered as a drug establishment with the United States Food and Drug Administration that has taken ownership or possession of the prescription drug and repacks it in accordance with this part.

(h) The purchase or other acquisition by a dispenser, hospital, or other health care entity of a prescription drug for use by such dispenser, hospital, or other health care entity.

(i) The distribution of a prescription drug by a hospital or other health care entity, or by a wholesale distributor or manufacturer operating at the direction of the hospital or other health care entity, to a repackager for the purpose of repackaging the prescription drug for use by that hospital, or other health care entity and other health care entities that are under common control, if ownership of the prescription drug remains with the hospital or other health care entity at all

times.

(j) ~~(d)~~ The distribution ~~sale, purchase, or trade~~ of blood and blood components intended for transfusion. As used in this paragraph, the term "blood" means whole blood collected from a single donor and processed for transfusion or further manufacturing, and the term "blood components" means that part of the blood separated by physical or mechanical means.

(k) ~~(e)~~ The lawful dispensing of a prescription drug in accordance with chapter 465.

(l) ~~(f)~~ The distribution ~~sale, purchase, or trade~~ of a prescription drug between pharmacies as a result of a sale, transfer, merger, or consolidation of all or part of the business of the pharmacies from or with another pharmacy, whether accomplished as a purchase and sale of stock or of business assets.

(m) The distribution of minimal quantities of prescription drugs by a licensed retail pharmacy to a licensed practitioner for office use in compliance with chapter 465 and rules adopted thereunder.

(n) The distribution of an intravenous prescription drug that, by its formulation, is intended for the replenishment of fluids and electrolytes, such as sodium, chloride, and potassium or calories, such as dextrose and amino acids.

(o) The distribution of an intravenous prescription drug used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions.

(p) The distribution of a prescription drug that is intended for irrigation or sterile water, whether intended for such purposes or for injection.

(q) The distribution of an exempt medical convenience kit pursuant to 21 U.S.C. s. 353(e)(4)(M).

(r) A common carrier that transports a prescription drug, if the common carrier does not take ownership of the prescription drug.

(s) Saleable drug returns when conducted by a dispenser.

(t) Facilitating the distribution of a prescription drug by providing solely administrative services, including processing of orders and payments.

(u) The distribution by a charitable organization described in s. 501(c)(3) of the Internal Revenue Code of prescription drugs donated to or supplied at a reduced price to the charitable organization to:

1. A licensed health care practitioner, as defined in s. 456.001, who is authorized under the appropriate practice act to prescribe and administer prescription drugs;

2. A health care clinic establishment permitted pursuant to chapter 499; or

3. The Department of Health or the licensed medical director of a government agency health care entity, authorized to possess prescription drugs, for storage and use in the treatment of persons in need of emergency medical services, including controlling communicable diseases or providing protection from unsafe conditions that pose an imminent threat to public health,

if the distributor and the receiving entity receive no direct or indirect financial benefit other than tax benefits related to charitable contributions. Distributions under this section that

involve controlled substances must comply with all state and federal regulations pertaining to the handling of controlled substances.

(v) The distribution of medical gas pursuant to part III of this chapter.

(49)~~(54)~~ "Wholesale distributor" means a ~~any~~ person, other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager, who is engaged in wholesale distribution ~~of prescription drugs in or into this state, including, but not limited to, manufacturers; repackagers; own label distributors; jobbers; private label distributors; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; exporters; retail pharmacies; and the agents thereof that conduct wholesale distributions~~.

Section 2. Subsections (21), (28), and (29) of section 499.005, Florida Statutes, are amended to read:

499.005 Prohibited acts.—It is unlawful for a person to perform or cause the performance of any of the following acts in this state:

(21) The wholesale distribution of any prescription drug that was:

(a) Purchased by a public or private hospital or other health care entity; or

(b) Donated or supplied at a reduced price to a charitable organization,

unless the wholesale distribution of the prescription drug is

authorized in s. 499.01(2)(h)1.c. ~~499.01(2)(g)1.c.~~

(28) Failure to acquire or deliver a transaction history, transaction information, or transaction statement ~~pedigree paper~~ as required under this part and rules adopted under this part.

~~(29) The receipt of a prescription drug pursuant to a wholesale distribution without having previously received or simultaneously receiving a pedigree paper that was attested to as accurate and complete by the wholesale distributor as required under this part.~~

Section 3. Subsections (4) through (17) of section 499.0051, Florida Statutes, are renumbered as subsections (3) through (16), respectively, and subsections (1) and (2), present subsection (3), paragraphs (h) and (i) of present subsection (12), paragraph (d) of present subsection (13), and present subsection (15) of that section are amended, to read:

499.0051 Criminal acts.—

(1) FAILURE TO MAINTAIN OR DELIVER TRANSACTION HISTORY, TRANSACTION INFORMATION, OR TRANSACTION STATEMENT ~~PEDIGREE PAPERS~~.—

(a) A person~~, other than a manufacturer,~~ engaged in the ~~wholesale~~ distribution of prescription drugs who fails to deliver to another person a complete and accurate transaction history, transaction information, or transaction statement ~~pedigree papers~~ concerning a prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, before ~~prior to~~, or simultaneous with, the transfer of the prescription drug or contraband prescription drug to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person engaged in the ~~wholesale~~ distribution of prescription drugs who fails to acquire a complete and accurate transaction history, transaction information, or transaction statement ~~pedigree papers~~ concerning a prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, before ~~prior to~~, or simultaneous with, the receipt of the prescription drug or contraband prescription drug from another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who knowingly destroys, alters, conceals, or fails to maintain a complete and accurate transaction history, transaction information, or transaction statement ~~pedigree papers~~ concerning any prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, in his or her possession commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(2) FAILURE TO AUTHENTICATE PEDIGREE PAPERS.—Effective July 1, 2006:~~

~~(a) A person engaged in the wholesale distribution of prescription drugs who is in possession of pedigree papers concerning prescription drugs or contraband prescription drugs and who fails to authenticate the matters contained in the pedigree papers and who nevertheless attempts to further distribute prescription drugs or contraband prescription drugs commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(b) A person in possession of pedigree papers concerning~~

~~prescription drugs or contraband prescription drugs who falsely swears or certifies that he or she has authenticated the matters contained in the pedigree papers commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(2) ~~(3)~~ KNOWING FORGERY OF TRANSACTION HISTORY, TRANSACTION INFORMATION, OR TRANSACTION STATEMENT ~~PEDIGREE PAPERS~~.—A person who knowingly forges, counterfeits, or falsely creates any transaction history, transaction information, or transaction statement ~~pedigree paper~~; who falsely represents any factual matter contained on any transaction history, transaction information, or transaction statement ~~pedigree paper~~; or who knowingly omits to record material information required to be recorded in a transaction history, transaction information, or transaction statement ~~pedigree paper~~, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(11) ~~(12)~~ ADULTERATED AND MISBRANDED DRUGS; FALSE ADVERTISEMENT; FAILURE TO MAINTAIN RECORDS RELATING TO DRUGS.—Any person who violates any of the following provisions commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; but, if the violation is committed after a conviction of such person under this subsection has become final, such person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or as otherwise provided in this part:

(h) The failure to maintain records related to a drug as required by this part and rules adopted under this part, except for transaction histories, transaction information, or

transaction statements ~~pedigree papers~~, invoices, or shipping documents related to prescription drugs.

(i) The possession of any drug in violation of this part, except if the violation relates to a deficiency in transaction histories, transaction information, or transaction statements ~~pedigree papers~~.

(12)~~(13)~~ REFUSAL TO ALLOW INSPECTION; SELLING, PURCHASING, OR TRADING DRUG SAMPLES; FAILURE TO MAINTAIN RECORDS RELATING TO PRESCRIPTION DRUGS.—Any person who violates any of the following provisions commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or as otherwise provided in this part:

(d) The failure to receive, maintain, or provide invoices and shipping documents~~, other than pedigree papers,~~ if applicable, related to the distribution of a prescription drug.

(15) FALSE ADVERTISEMENT.—A publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, repackager, wholesale distributor, or seller of the article to which a false advertisement relates, is not liable under subsection (11) ~~(12)~~, subsection (12) ~~(13)~~, or subsection (13) ~~(14)~~ by reason of the dissemination by him or her of such false advertisement, unless he or she has refused, on the request of the department, to furnish to the department the name and post office address of the manufacturer, repackager, wholesale distributor, seller, or advertising agency that asked him or her to disseminate such advertisement.

Section 4. Section 499.006, Florida Statutes, is amended to read:

499.006 Adulterated drug or device.—A drug or device is adulterated, if any of the following apply:

(1) ~~If~~ It consists in whole or in part of any filthy, putrid, or decomposed substance.~~,~~

(2) ~~If~~ It has been produced, prepared, packed, or held under conditions whereby it could have been contaminated with filth or rendered injurious to health.~~,~~

(3) ~~If~~ It is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to, or are not operated or administered in conformity with, current good manufacturing practices to assure that the drug meets the requirements of this part and that the drug has the identity and strength, and meets the standard of quality and purity, which it purports or is represented to possess.~~,~~

(4) ~~If~~ It is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which could render the contents injurious to health.~~,~~

(5) ~~If~~ It is a drug and it bears or contains, for the purpose of coloring only, a color additive that is unsafe within the meaning of the federal act; or, if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, and it is unsafe within the meaning of the federal act.~~,~~

(6) ~~If~~ It purports to be, or is represented as, a drug the name of which is recognized in the official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. The determination as to strength, quality, or purity must be made in accordance with the

tests or methods of assay set forth in such compendium, or, when such tests or methods of assay are absent or inadequate, in accordance with those tests or methods of assay prescribed under authority of the federal act. A drug defined in the official compendium is not adulterated under this subsection merely because it differs from the standard of strength, quality, or purity set forth for that drug in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.~~;~~

(7) ~~If~~ It is not subject to subsection (6) and its strength differs from, or its purity or quality falls below the standard of, that which it purports or is represented to possess.~~;~~

(8) ~~If~~ It is a drug:

(a) With which any substance has been mixed or packed so as to reduce the quality or strength of the drug; or

(b) For which any substance has been substituted wholly or in part.~~;~~

(9) ~~If~~ It is a drug or device for which the expiration date has passed.~~;~~

(10) ~~If~~ It is a prescription drug for which the required transaction history, transaction information, or transaction statement ~~pedigree paper~~ is nonexistent, fraudulent, or incomplete under the requirements of this part or applicable rules, or that has been purchased, held, sold, or distributed at any time by a person not authorized under federal or state law to do so.~~; or~~

(11) ~~If~~ It is a prescription drug subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which has been returned by a veterinarian to a

limited prescription drug veterinary wholesale distributor.

Section 5. Section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(1) Before ~~Prior to~~ operating, a permit is required for each person and establishment that intends to operate as:

(a) A prescription drug manufacturer;

(b) A prescription drug repackager;

(c) A nonresident prescription drug manufacturer;

(d) A nonresident prescription drug repackager;

(e)~~(d)~~ A prescription drug wholesale distributor;

(f)~~(e)~~ An out-of-state prescription drug wholesale distributor;

(g)~~(f)~~ A retail pharmacy drug wholesale distributor;

(h)~~(g)~~ A restricted prescription drug distributor;

(i)~~(h)~~ A complimentary drug distributor;

(j)~~(i)~~ A freight forwarder;

(k)~~(j)~~ A veterinary prescription drug retail establishment;

(l)~~(k)~~ A veterinary prescription drug wholesale distributor;

(m)~~(l)~~ A limited prescription drug veterinary wholesale distributor;

(n)~~(m)~~ An over-the-counter drug manufacturer;

(o)~~(n)~~ A device manufacturer;

(p)~~(o)~~ A cosmetic manufacturer;

(q)~~(p)~~ A third party logistics provider; or

(r)~~(q)~~ A health care clinic establishment.

(2) The following permits are established:

(a) *Prescription drug manufacturer permit.*—A prescription

drug manufacturer permit is required for any person that is a manufacturer of a prescription drug and that manufactures or distributes such prescription drugs in this state.

1. A person that operates an establishment permitted as a prescription drug manufacturer may engage in ~~wholesale~~ distribution of prescription drugs for which the person is the manufacturer ~~manufactured at that establishment~~ and must comply with s. 499.0121 and all other ~~of the~~ provisions of this part~~, except s. 499.01212,~~ and ~~the~~ rules adopted under this part~~, except s. 499.01212, which apply to a wholesale distributor~~. The department shall adopt rules for issuing a virtual prescription drug manufacturer permit to a person who engages in the manufacture of prescription drugs but does not make or take physical possession of any prescription drugs. The rules adopted by the department under this section may exempt virtual manufacturers from certain establishment, security, and storage requirements set forth in s. 499.0121.

2. A prescription drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

3. A blood establishment, as defined in s. 381.06014, operating in a manner consistent with the provisions of 21 C.F.R. parts 211 and 600-640, and manufacturing only the prescription drugs described in s. 499.003(48)(j) ~~499.003(53)(d)~~ is not required to be permitted as a prescription drug manufacturer under this paragraph or to register products under s. 499.015.

(b) *Prescription drug repackager permit.*—A prescription drug repackager permit is required for any person that repackages a prescription drug in this state.

1. A person that operates an establishment permitted as a prescription drug repackager may engage in ~~wholesale~~ distribution of prescription drugs repackaged at that establishment and must comply with all of the provisions of this part and the rules adopted under this part that apply to a prescription drug manufacturer ~~wholesale distributor~~.

2. A prescription drug repackager must comply with all appropriate state and federal good manufacturing practices.

(c) *Nonresident prescription drug manufacturer permit.*—A nonresident prescription drug manufacturer permit is required for any person that is a manufacturer of prescription drugs, unless permitted as a third party logistics provider, located outside of this state or outside the United States and that engages in the ~~wholesale~~ distribution in this state of such prescription drugs. Each such manufacturer must be permitted by the department and comply with all of the provisions required of a prescription drug manufacturer ~~wholesale distributor~~ under this part~~, except s. 499.01212~~. The department shall adopt rules for issuing a virtual nonresident prescription drug manufacturer permit to a person who engages in the manufacture of prescription drugs but does not make or take physical possession of any prescription drugs. The rules adopted by the department under this section may exempt virtual nonresident manufacturers from certain establishment, security, and storage requirements set forth in s. 499.0121.

1. A person that distributes prescription drugs for which the person is not the manufacturer must also obtain an out-of-state prescription drug wholesale distributor permit or third party logistics provider permit pursuant to this section to

engage in the ~~wholesale~~ distribution of such prescription drugs when required by this part. This subparagraph does not apply to a manufacturer that distributes prescription drugs only for the manufacturer of the prescription drugs where both manufacturers are affiliates ~~as defined in s. 499.003(30)(c)~~.

2. Any such person must comply with the licensing or permitting requirements of the jurisdiction in which the establishment is located and the federal act, and any prescription drug distributed ~~product wholesaled~~ into this state must comply with this part. If a person intends to import prescription drugs from a foreign country into this state, the nonresident prescription drug manufacturer must provide to the department a list identifying each prescription drug it intends to import and document approval by the United States Food and Drug Administration for such importation.

(d) *Nonresident prescription drug repackager permit.*—A nonresident prescription drug repackager permit is required for any person located outside of this state, but within the United States or its territories, that repackages prescription drugs and engages in the distribution of such prescription drugs into this state.

1. A nonresident prescription drug repackager must comply with all of the provisions of this section and the rules adopted under this section that apply to a prescription drug manufacturer.

2. A nonresident prescription drug repackager must be permitted by the department and comply with all appropriate state and federal good manufacturing practices.

3. A nonresident prescription drug repackager must be

registered as a drug establishment with the United States Food and Drug Administration.

(e) ~~(d)~~ *Prescription drug wholesale distributor permit.*—A prescription drug wholesale distributor permit is required for any person who is a wholesale distributor of prescription drugs and that ~~may engage in the~~ wholesale distributes such ~~distribution of~~ prescription drugs in this state. ~~A prescription drug wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $100,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.~~ The department may adopt rules for issuing a prescription drug wholesale distributor-broker permit to a person who engages in the wholesale distribution of prescription drugs and does not take physical possession of any prescription drugs.

(f) ~~(e)~~ *Out-of-state prescription drug wholesale distributor permit.*—An out-of-state prescription drug wholesale distributor permit is required for any person that is a wholesale

distributor located outside this state, but within the United States or its territories, which engages in the wholesale distribution of prescription drugs into this state ~~and which must be permitted by the department and comply with all the provisions required of a wholesale distributor under this part~~. ~~An out-of-state prescription drug wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $100,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.~~ The out-of-state prescription drug wholesale distributor must maintain at all times a license or permit to engage in the wholesale distribution of prescription drugs in compliance with laws of the state in which it is a resident. If the state from which the wholesale distributor distributes prescription drugs does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

(g) ~~(f)~~ *Retail pharmacy drug wholesale distributor permit.*—A retail pharmacy drug wholesale distributor is a retail pharmacy engaged in wholesale distribution of prescription drugs within this state under the following conditions:

1. The pharmacy must obtain a retail pharmacy drug wholesale distributor permit pursuant to this part and ~~the~~ rules adopted under this part.

2. The wholesale distribution activity does not exceed 30 percent of the total annual purchases of prescription drugs. If the wholesale distribution activity exceeds the 30-percent maximum, the pharmacy must obtain a prescription drug wholesale distributor permit.

3. The transfer of prescription drugs that appear in any schedule contained in chapter 893 is subject to chapter 893 and the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

4. The transfer is between a retail pharmacy and another retail pharmacy, or a Modified Class II institutional pharmacy, or a health care practitioner licensed in this state and authorized by law to dispense or prescribe prescription drugs.

5. All records of sales of prescription drugs subject to this section must be maintained separate and distinct from other records and comply with the recordkeeping requirements of this part.

(h) ~~(g)~~ *Restricted prescription drug distributor permit.*—

1. A restricted prescription drug distributor permit is required for:

a. Any person located in this state who engages in the distribution of a prescription drug, which distribution is not

considered "wholesale distribution" under s. 499.003(48)(a) ~~499.003(53)(a)~~.

b. Any person located in this state who engages in the receipt or distribution of a prescription drug in this state for the purpose of processing its return or its destruction if such person is not the person initiating the return, the prescription drug wholesale supplier of the person initiating the return, or the manufacturer of the drug.

c. A blood establishment located in this state which collects blood and blood components only from volunteer donors as defined in s. 381.06014 or pursuant to an authorized practitioner's order for medical treatment or therapy and engages in the wholesale distribution of a prescription drug not described in s. 499.003(48)(j) ~~499.003(53)(d)~~ to a health care entity. A mobile blood unit operated by a blood establishment permitted under this sub-subparagraph is not required to be separately permitted. The health care entity receiving a prescription drug distributed under this sub-subparagraph must be licensed as a closed pharmacy or provide health care services at that establishment. The blood establishment must operate in accordance with s. 381.06014 and may distribute only:

(I) Prescription drugs indicated for a bleeding or clotting disorder or anemia;

(II) Blood-collection containers approved under s. 505 of the federal act;

(III) Drugs that are blood derivatives, or a recombinant or synthetic form of a blood derivative;

(IV) Prescription drugs that are identified in rules adopted by the department and that are essential to services

performed or provided by blood establishments and authorized for distribution by blood establishments under federal law; or

(V) To the extent authorized by federal law, drugs necessary to collect blood or blood components from volunteer blood donors; for blood establishment personnel to perform therapeutic procedures under the direction and supervision of a licensed physician; and to diagnose, treat, manage, and prevent any reaction of a volunteer blood donor or a patient undergoing a therapeutic procedure performed under the direction and supervision of a licensed physician,

as long as all of the health care services provided by the blood establishment are related to its activities as a registered blood establishment or the health care services consist of collecting, processing, storing, or administering human hematopoietic stem cells or progenitor cells or performing diagnostic testing of specimens if such specimens are tested together with specimens undergoing routine donor testing. The blood establishment may purchase and possess the drugs described in this sub-subparagraph without a health care clinic establishment permit.

2. Storage, handling, and recordkeeping of these distributions by a person required to be permitted as a restricted prescription drug distributor must be in accordance with the requirements for wholesale distributors under s. 499.0121~~, but not those set forth in s. 499.01212 if the distribution occurs pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b~~.

3. A person who applies for a permit as a restricted

576-03423-16

prescription drug distributor, or for the renewal of such a permit, must provide to the department the information required under s. 499.012.

4. The department may adopt rules regarding the distribution of prescription drugs by hospitals, health care entities, charitable organizations, other persons not involved in wholesale distribution, and blood establishments, which rules are necessary for the protection of the public health, safety, and welfare.

(i) ~~(h)~~ *Complimentary drug distributor permit.*—A complimentary drug distributor permit is required for any person that engages in the distribution of a complimentary drug, subject to the requirements of s. 499.028.

(j) ~~(i)~~ *Freight forwarder permit.*—A freight forwarder permit is required for any person that engages in the distribution of a prescription drug as a freight forwarder unless the person is a common carrier. The storage, handling, and recordkeeping of such distributions must comply with the requirements for wholesale distributors under s. 499.0121~~, but not those set forth in s. 499.01212~~. A freight forwarder must provide the source of the prescription drugs with a validated airway bill, bill of lading, or other appropriate documentation to evidence the exportation of the product.

(k) ~~(j)~~ *Veterinary prescription drug retail establishment permit.*—A veterinary prescription drug retail establishment permit is required for any person that sells veterinary prescription drugs to the public but does not include a pharmacy licensed under chapter 465.

1. The sale to the public must be based on a valid written

576-03423-16

order from a veterinarian licensed in this state who has a valid client-veterinarian relationship with the purchaser's animal.

2. Veterinary prescription drugs may not be sold in excess of the amount clearly indicated on the order or beyond the date indicated on the order.

3. An order may not be valid for more than 1 year.

4. A veterinary prescription drug retail establishment may not purchase, sell, trade, or possess human prescription drugs or any controlled substance as defined in chapter 893.

5. A veterinary prescription drug retail establishment must sell a veterinary prescription drug in the original, sealed manufacturer's container with all labeling intact and legible. The department may adopt by rule additional labeling requirements for the sale of a veterinary prescription drug.

6. A veterinary prescription drug retail establishment must comply with all of the wholesale distribution requirements of s. 499.0121.

7. Prescription drugs sold by a veterinary prescription drug retail establishment pursuant to a practitioner's order may not be returned into the retail establishment's inventory.

(l) ~~(k)~~ *Veterinary prescription drug wholesale distributor permit.*—A veterinary prescription drug wholesale distributor permit is required for any person that engages in the distribution of veterinary prescription drugs in or into this state. A veterinary prescription drug wholesale distributor that also distributes prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which it did not manufacture must obtain a permit as a prescription drug wholesale distributor, an out-of-state

prescription drug wholesale distributor, or a limited prescription drug veterinary wholesale distributor in lieu of the veterinary prescription drug wholesale distributor permit. A veterinary prescription drug wholesale distributor must comply with the requirements for wholesale distributors under s. 499.0121~~, but not those set forth in s. 499.01212~~.

(m)~~(l)~~ *Limited prescription drug veterinary wholesale distributor permit.*—Unless engaging in the activities of and permitted as a prescription drug manufacturer, nonresident prescription drug manufacturer, prescription drug wholesale distributor, or out-of-state prescription drug wholesale distributor, a limited prescription drug veterinary wholesale distributor permit is required for any person that engages in the distribution in or into this state of veterinary prescription drugs and prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act under the following conditions:

1. The person is engaged in the business of wholesaling prescription and veterinary prescription drugs to persons:

a. Licensed as veterinarians practicing on a full-time basis;

b. Regularly and lawfully engaged in instruction in veterinary medicine;

c. Regularly and lawfully engaged in law enforcement activities;

d. For use in research not involving clinical use; or

e. For use in chemical analysis or physical testing or for purposes of instruction in law enforcement activities, research, or testing.

2. No more than 30 percent of total annual prescription drug sales may be prescription drugs approved for human use which are subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act.

3. The person does not distribute in any jurisdiction prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act to any person who is authorized to sell, distribute, purchase, trade, or use these drugs on or for humans.

4. A limited prescription drug veterinary wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $20,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee’s license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.

5. A limited prescription drug veterinary wholesale distributor must maintain at all times a license or permit to engage in the wholesale distribution of prescription drugs in compliance with laws of the state in which it is a resident.

6. A limited prescription drug veterinary wholesale distributor must comply with the requirements for wholesale distributors under s. ~~ss.~~ 499.0121 ~~and 499.01212, except that a limited prescription drug veterinary wholesale distributor is not required to provide a pedigree paper as required by s. 499.01212 upon the wholesale distribution of a prescription drug to a veterinarian~~.

7. A limited prescription drug veterinary wholesale distributor may not return to inventory for subsequent wholesale distribution any prescription drug subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which has been returned by a veterinarian.

8. A limited prescription drug veterinary wholesale distributor permit is not required for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is duly licensed to engage in the wholesale distribution of prescription drugs in its state of residence to a licensed limited prescription drug veterinary wholesale distributor in this state if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of s. ~~ss.~~ 499.0121(6) ~~and 499.01212~~ must be followed for this transaction.

(n) ~~(m)~~ *Over-the-counter drug manufacturer permit.*—An over-the-counter drug manufacturer permit is required for any person that engages in the manufacture or repackaging of an over-the-counter drug.

1. An over-the-counter drug manufacturer may not possess or purchase prescription drugs.

2. A pharmacy is exempt from obtaining an over-the-counter

drug manufacturer permit if it is operating in compliance with pharmacy practice standards as defined in chapter 465 and ~~the~~ rules adopted under that chapter.

3. An over-the-counter drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

(o) ~~(n)~~ *Device manufacturer permit.*—

1. A device manufacturer permit is required for any person that engages in the manufacture, repackaging, or assembly of medical devices for human use in this state, except that a permit is not required if:

a. The person is engaged only in manufacturing, repackaging, or assembling a medical device pursuant to a practitioner's order for a specific patient; or

b. The person does not manufacture, repackage, or assemble any medical devices or components for such devices, except those devices or components which are exempt from registration pursuant to s. 499.015(8).

2. A manufacturer or repackager of medical devices in this state must comply with all appropriate state and federal good manufacturing practices and quality system rules.

3. The department shall adopt rules related to storage, handling, and recordkeeping requirements for manufacturers of medical devices for human use.

(p) ~~(o)~~ *Cosmetic manufacturer permit.*—A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in this state. A person that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a permit under this paragraph.

(q)~~(p)~~ *Third party logistics provider permit.*—A third party logistics provider permit is required for any person that contracts with a prescription drug wholesale distributor or prescription drug manufacturer to provide warehousing, distribution, or other logistics services on behalf of a manufacturer, ~~or~~ wholesale distributor, or dispenser, but who does not take title to the prescription drug or have responsibility to direct the sale or disposition of the prescription drug. A third party logistics provider located outside of this state, must be licensed in the state or territory from which the prescription drug is distributed by the third party logistics provider. If the state or territory from which the third party logistics provider originates does not require a license to operate as a third party logistics provider, the third party logistic provider must be licensed as a third party logistics provider as required by the federal act. Each third party logistics provider permittee shall comply with s. ~~the requirements for wholesale distributors under ss.~~ 499.0121 ~~and 499.01212, with the exception of those wholesale distributions described in s. 499.01212(3)(a),~~ and other rules that the department requires.

(r)~~(q)~~ *Health care clinic establishment permit.* ~~Effective January 1, 2009,~~ A health care clinic establishment permit is required for the purchase of a prescription drug by a place of business at one general physical location that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number. For the purpose of this paragraph, the term "qualifying practitioner" means a licensed health care

practitioner defined in s. 456.001, or a veterinarian licensed under chapter 474, who is authorized under the appropriate practice act to prescribe and administer a prescription drug.

1. An establishment must provide, as part of the application required under s. 499.012, designation of a qualifying practitioner who will be responsible for complying with all legal and regulatory requirements related to the purchase, recordkeeping, storage, and handling of the prescription drugs. In addition, the designated qualifying practitioner shall be the practitioner whose name, establishment address, and license number is used on all distribution documents for prescription drugs purchased or returned by the health care clinic establishment. Upon initial appointment of a qualifying practitioner, the qualifying practitioner and the health care clinic establishment shall notify the department on a form furnished by the department within 10 days after such employment. In addition, the qualifying practitioner and health care clinic establishment shall notify the department within 10 days after any subsequent change.

2. The health care clinic establishment must employ a qualifying practitioner at each establishment.

3. In addition to the remedies and penalties provided in this part, a violation of this chapter by the health care clinic establishment or qualifying practitioner constitutes grounds for discipline of the qualifying practitioner by the appropriate regulatory board.

4. The purchase of prescription drugs by the health care clinic establishment is prohibited during any period of time when the establishment does not comply with this paragraph.

5. A health care clinic establishment permit is not a pharmacy permit or otherwise subject to chapter 465. A health care clinic establishment that meets the criteria of a modified Class II institutional pharmacy under s. 465.019 is not eligible to be permitted under this paragraph.

6. This paragraph does not apply to the purchase of a prescription drug by a licensed practitioner under his or her license.

(3) A nonresident prescription drug manufacturer permit is not required for a manufacturer to distribute a prescription drug active pharmaceutical ingredient that it manufactures to a prescription drug manufacturer permitted in this state ~~in limited quantities~~ intended for research and development and not for resale or human use other than lawful clinical trials and biostudies authorized and regulated by federal law. A manufacturer claiming to be exempt from the permit requirements of this subsection and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall comply with the recordkeeping requirements of s. 499.0121(6)~~, but not the requirements of s. 499.01212~~. The prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall maintain on file a record of the FDA registration number; if available, the out-of-state license, permit, or registration number; and, if available, a copy of the most current FDA inspection report, for all manufacturers from whom they purchase active pharmaceutical ingredients under this section. ~~The department shall define the term "limited quantities" by rule, and may include the allowable number of transactions within a given period of time and the~~

~~amount of prescription drugs distributed into the state for purposes of this exemption.~~ The failure to comply with the requirements of this subsection, or rules adopted by the department to administer this subsection, for the purchase of prescription drug active pharmaceutical ingredients is a violation of s. 499.005(14), and a knowing failure is a violation of s. 499.0051(3) ~~499.0051(4)~~.

(a) The immediate package or container of a prescription drug active pharmaceutical ingredient distributed into the state that is intended for research and development under this subsection shall bear a label prominently displaying the statement: "Caution: Research and Development Only—Not for Manufacturing, Compounding, or Resale."

(b) A prescription drug manufacturer that obtains a prescription drug active pharmaceutical ingredient under this subsection for use in clinical trials and or biostudies authorized and regulated by federal law must create and maintain records detailing the specific clinical trials or biostudies for which the prescription drug active pharmaceutical ingredient was obtained.

(4)(a) A permit issued under this part is not required to distribute a prescription drug active pharmaceutical ingredient from an establishment located in the United States to an establishment located in this state permitted as a prescription drug manufacturer under this part for use by the recipient in preparing, deriving, processing, producing, or fabricating a prescription drug finished dosage form at the establishment in this state where the product is received under an approved and otherwise valid New Drug Approval Application, Abbreviated New

Drug Application, New Animal Drug Application, or Therapeutic Biologic Application, provided that the application, active pharmaceutical ingredient, or finished dosage form has not been withdrawn or removed from the market in this country for public health reasons.

1. Any distributor claiming exemption from permitting requirements pursuant to this paragraph shall maintain a license, permit, or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed. If the state from which the prescription drugs are distributed does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

2. Any distributor claiming exemption from permitting requirements pursuant to this paragraph and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall comply with the recordkeeping requirements of s. 499.0121(6)~~, but not the requirements of s. 499.01212~~.

(b) A permit issued under this part is not required to distribute ~~limited quantities of~~ a prescription drug that has not been repackaged from an establishment located in the United States to an establishment located in this state permitted as a prescription drug manufacturer under this part for research and development or to a holder of a letter of exemption issued by the department under s. 499.03(4) for research, teaching, or testing. ~~The department shall define "limited quantities" by rule and may include the allowable number of transactions within~~

~~a given period of time and the amounts of prescription drugs distributed into the state for purposes of this exemption.~~

1. Any distributor claiming exemption from permitting requirements pursuant to this paragraph shall maintain a license, permit, or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed. If the state from which the prescription drugs are distributed does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

2. All purchasers and recipients of any prescription drugs distributed pursuant to this paragraph shall ensure that the products are not resold or used, directly or indirectly, on humans except in lawful clinical trials and biostudies authorized and regulated by federal law.

3. Any distributor claiming exemption from permitting requirements pursuant to this paragraph, and the purchaser and recipient of the prescription drug, shall comply with the recordkeeping requirements of s. 499.0121(6)~~, but not the requirements of s. 499.01212~~.

4. The immediate package or container of any active pharmaceutical ingredient distributed into the state that is intended for teaching, testing, research, and development shall bear a label prominently displaying the statement: "Caution: Research, Teaching, or Testing Only – Not for Manufacturing, Compounding, or Resale."

(c) An out-of-state prescription drug wholesale distributor permit is not required for an intracompany sale or transfer of a

prescription drug from an out-of-state establishment that is duly licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in this state, if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of s. ~~ss.~~ 499.0121(6) ~~and 499.01212~~ must be followed for such transactions.

(d) Persons receiving prescription drugs from a source claimed to be exempt from permitting requirements under this subsection shall maintain on file:

1. A record of the FDA establishment registration number, if any;

2. The resident state or federal license, registration, or permit that authorizes the source to distribute prescription drugs ~~drug wholesale distribution license, permit, or registration number~~; and

3. A copy of the most recent resident state or FDA inspection report, for all distributors and establishments from whom they purchase or receive prescription drugs under this subsection.

(e) All persons claiming exemption from permitting requirements pursuant to this subsection who engage in the distribution of prescription drugs within or into the state are subject to this part, including ss. 499.005 and 499.0051, and shall make available, within 48 hours, to the department on request all records related to any prescription drugs distributed under this subsection, including those records described in s. 499.051(4), regardless of the location where the

records are stored.

(f) A person purchasing and receiving a prescription drug from a person claimed to be exempt from licensing requirements pursuant to this subsection shall report to the department in writing within 14 days after receiving any product that is misbranded or adulterated or that fails to meet minimum standards set forth in the official compendium or state or federal good manufacturing practices for identity, purity, potency, or sterility, regardless of whether the product is thereafter rehabilitated, quarantined, returned, or destroyed.

(g) The department may adopt rules to administer this subsection which are necessary for the protection of the public health, safety, and welfare. Failure to comply with the requirements of this subsection, or rules adopted by the department to administer this subsection, is a violation of s. 499.005(14), and a knowing failure is a violation of s. 499.0051(3) ~~499.0051(4)~~.

(h) This subsection does not relieve any person from any requirement prescribed by law with respect to controlled substances as defined in the applicable federal and state laws.

(5) A prescription drug repackager permit issued under this part is not required for a restricted prescription drug distributor permitholder that is a health care entity to repackage prescription drugs in this state for its own use or for distribution to hospitals or other health care entities in the state for their own use, pursuant to s. 499.003(48)(a)3. ~~499.003(53)(a)3.~~, if:

(a) The prescription drug distributor notifies the department, in writing, of its intention to engage in

repackaging under this exemption, 30 days before engaging in the repackaging of prescription drugs at the permitted establishment;

(b) The prescription drug distributor is under common control with the hospitals or other health care entities to which the prescription drug distributor is distributing prescription drugs. As used in this paragraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(c) The prescription drug distributor repackages the prescription drugs in accordance with current state and federal good manufacturing practices; and

(d) The prescription drug distributor labels the prescription drug it repackages in accordance with state and federal laws and rules.

The prescription drug distributor is exempt from the product registration requirements of s. 499.015 with regard to the prescription drugs that it repackages and distributes under this subsection. A prescription drug distributor that repackages and distributes prescription drugs under this subsection to a not-for-profit rural hospital, as defined in s. 395.602, is not required to comply with paragraph (c) or paragraph (d), but must provide to each health care entity for which it repackages, for each prescription drug that is repackaged and distributed, the information required by department rule for labeling prescription drugs. The prescription drug distributor shall also provide the additional current packaging and label information

for the prescription drug by hard copy or by electronic means.

Section 6. Section 499.012, Florida Statutes, is amended to read:

499.012 Permit application requirements.—

(1)(a) A permit issued pursuant to this part may be issued only to a natural person who is at least 18 years of age or to an applicant that is not a natural person if each person who, directly or indirectly, manages, controls, or oversees the operation of that applicant is at least 18 years of age.

(b) An establishment that is a place of residence may not receive a permit and may not operate under this part.

(c) A person that applies for or renews a permit to manufacture or distribute prescription drugs may not use a name identical to the name used by any other establishment or licensed person authorized to purchase prescription drugs in this state, except that a restricted drug distributor permit issued to a health care entity will be issued in the name in which the institutional pharmacy permit is issued and a retail pharmacy drug wholesale distributor will be issued a permit in the name of its retail pharmacy permit.

(d) A permit for a prescription drug manufacturer, prescription drug repackager, prescription drug wholesale distributor, limited prescription drug veterinary wholesale distributor, or retail pharmacy drug wholesale distributor may not be issued to the address of a health care entity or to a pharmacy licensed under chapter 465, except as provided in this paragraph. The department may issue a prescription drug manufacturer permit to an applicant at the same address as a licensed nuclear pharmacy, which is a health care entity, even

if the nuclear pharmacy holds a special sterile compounding permit under chapter 465, for the purpose of manufacturing prescription drugs used in positron emission tomography or other radiopharmaceuticals, as listed in a rule adopted by the department pursuant to this paragraph. The purpose of this exemption is to assure availability of state-of-the-art pharmaceuticals that would pose a significant danger to the public health if manufactured at a separate establishment address from the nuclear pharmacy from which the prescription drugs are dispensed. The department may also issue a retail pharmacy drug wholesale distributor permit to the address of a community pharmacy licensed under chapter 465, even if the community pharmacy holds a special sterile compounding permit under chapter 465, as long as the community pharmacy ~~which~~ does not meet the definition of a closed pharmacy in s. 499.003.

(e) A county or municipality may not issue an occupational license for ~~any licensing period beginning on or after October 1, 2003, for~~ any establishment that requires a permit pursuant to this part, unless the establishment exhibits a current permit issued by the department for the establishment. Upon presentation of the requisite permit issued by the department, an occupational license may be issued by the municipality or county in which application is made. The department shall furnish to local agencies responsible for issuing occupational licenses a current list of all establishments licensed pursuant to this part.

(2) Notwithstanding subsection (6), a permitted person in good standing may change the type of permit issued to that person by completing a new application for the requested permit,

paying the amount of the difference in the permit fees if the fee for the new permit is more than the fee for the original permit, and meeting the applicable permitting conditions for the new permit type. The new permit expires on the expiration date of the original permit being changed; however, a new permit for a prescription drug wholesale distributor, an out-of-state prescription drug wholesale distributor, or a retail pharmacy drug wholesale distributor shall expire on the expiration date of the original permit or 1 year after the date of issuance of the new permit, whichever is earlier. A refund may not be issued if the fee for the new permit is less than the fee that was paid for the original permit.

(3)(a) A written application for a permit or to renew a permit must be filed with the department on forms furnished by the department. The department shall establish, by rule, the form and content of the application to obtain or renew a permit. The applicant must submit to the department with the application a statement that swears or affirms that the information is true and correct.

(b) Upon a determination that 2 years have elapsed since the department notified an applicant for permit, certification, or product registration of a deficiency in the application and that the applicant has failed to cure the deficiency, the application shall expire. The determination regarding the 2-year lapse of time shall be based on documentation that the department notified the applicant of the deficiency in accordance with s. 120.60.

(c) Information submitted by an applicant on an application required pursuant to this subsection which is a trade secret, as

defined in s. 812.081, shall be maintained by the department as trade secret information pursuant to s. 499.051(7).

(4)(a) Except for a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor, an application for a permit must include:

1. The name, full business address, and telephone number of the applicant;

2. All trade or business names used by the applicant;

3. The address, telephone numbers, and the names of contact persons for each facility used by the applicant for the storage, handling, and distribution of prescription drugs;

4. The type of ownership or operation, such as a partnership, corporation, or sole proprietorship; and

5. The names of the owner and the operator of the establishment, including:

a. If an individual, the name of the individual;

b. If a partnership, the name of each partner and the name of the partnership;

c. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;

d. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity;

e. If a limited liability company, the name of each member, the name of each manager, the name of the limited liability company, and the name of the state in which the limited liability company was organized; and

f. Any other relevant information that the department requires.

(b) Upon approval of the application by the department and payment of the required fee, the department shall issue a permit to the applicant, if the applicant meets the requirements of this part and rules adopted under this part.

(c) Any change in information required under paragraph (a) must be submitted to the department before the change occurs.

(d) The department shall consider, at a minimum, the following factors in reviewing the qualifications of persons to be permitted under this part:

1. The applicant’s having been found guilty, regardless of adjudication, in a court of this state or other jurisdiction, of a violation of a law that directly relates to a drug, device, or cosmetic. A plea of nolo contendere constitutes a finding of guilt for purposes of this subparagraph.

2. The applicant’s having been disciplined by a regulatory agency in any state for any offense that would constitute a violation of this part.

3. Any felony conviction of the applicant under a federal, state, or local law;

4. The applicant’s past experience in manufacturing or distributing drugs, devices, or cosmetics;

5. The furnishing by the applicant of false or fraudulent material in any application made in connection with manufacturing or distributing drugs, devices, or cosmetics;

6. Suspension or revocation by a federal, state, or local government of any permit currently or previously held by the applicant for the manufacture or distribution of any drugs, devices, or cosmetics;

7. Compliance with permitting requirements under any

previously granted permits;

8. Compliance with requirements to maintain or make available to the state permitting authority or to federal, state, or local law enforcement officials those records required under this section; and

9. Any other factors or qualifications the department considers relevant to and consistent with the public health and safety.

(5) ~~Except for a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor:~~

(a) The department shall adopt rules for the biennial renewal of permits; however, the department may issue up to a 4-year permit to selected permittees notwithstanding any other provision of law. Fees for such renewal may not exceed the fee caps set forth in s. 499.041 on an annualized basis as authorized by law.

(b) The department shall renew a permit upon receipt of the renewal application and renewal fee if the applicant meets the requirements established under this part and ~~the~~ rules adopted under this part.

(c) At least 90 days before the expiration date of a permit, the department shall forward a permit renewal notification to the permittee at the mailing address of the permitted establishment on file with the department. The permit renewal notification must state conspicuously the date on which the permit for the establishment will expire and that the establishment may not operate unless the permit for the establishment is renewed timely. ~~A permit, unless sooner~~

~~suspended or revoked, automatically expires 2 years after the last day of the anniversary month in which the permit was originally issued.~~

(d) A permit issued under this part may be renewed by making application for renewal on forms furnished by the department and paying the appropriate fees.

1. If a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor renewal application and fee are submitted and postmarked later than 45 days before the expiration date of the permit, the permit may be renewed only upon payment of a late renewal fee of $100, plus the required renewal fee.

2. If any other ~~a~~ renewal application and fee are submitted and postmarked after the expiration date of the permit, the permit may be renewed only upon payment of a late renewal delinquent fee of $100, plus the required renewal fee, not later than 60 days after the expiration date.

3. A permittee who submits a renewal application in accordance with this paragraph may continue to operate under its permit, unless the permit is suspended or revoked, until final disposition of the renewal application.

4.~~(d)~~ Failure to renew a permit in accordance with this section precludes any future renewal of that permit. If a permit issued pursuant to this part has expired and cannot be renewed, before an establishment may engage in activities that require a permit under this part, the establishment must submit an application for a new permit, pay the applicable application fee, the initial permit fee, and all applicable penalties, and be issued a new permit by the department.

(6) A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

(a) A person permitted under this part must notify the department before making a change of address. The department shall set a change of location fee not to exceed $100.

(b)1. An application for a new permit is required when a majority of the ownership or controlling interest of a permitted establishment is transferred or assigned or when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the establishment will rest with the lessee. The application for the new permit must be made before the date of the sale, transfer, assignment, or lease.

2. A permittee that is authorized to distribute prescription drugs may transfer such drugs to the new owner or lessee under subparagraph 1. only after the new owner or lessee has been approved for a permit to distribute prescription drugs.

(c) If an establishment permitted under this part closes, the owner must notify the department in writing before the effective date of closure and must:

1. Return the permit to the department;

2. If the permittee is authorized to distribute prescription drugs, indicate the disposition of such drugs, including the name, address, and inventory, and provide the name and address of a person to contact regarding access to records that are required to be maintained under this part. Transfer of

ownership of prescription drugs may be made only to persons authorized to possess prescription drugs under this part.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

(7) A permit must be posted in a conspicuous place on the licensed premises.

(8) An application for a permit or to renew a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor submitted to the department must include:

(a) The name, full business address, and telephone number of the applicant.

(b) All trade or business names used by the applicant.

(c) The address, telephone numbers, and the names of contact persons for each facility used by the applicant for the storage, handling, and distribution of prescription drugs.

(d) The type of ownership or operation, such as a partnership, corporation, or sole proprietorship.

(e) The names of the owner and the operator of the establishment, including:

1. If an individual, the name of the individual.

2. If a partnership, the name of each partner and the name of the partnership.

3. If a corporation:

a. The name, address, and title of each corporate officer and director.

b. The name and address of the corporation, resident agent of the corporation, the resident agent’s address, and the

corporation's state of incorporation.

c. The name and address of each shareholder of the corporation that owns 5 percent or more of the outstanding stock of the corporation.

4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.

5. If a limited liability company:

a. The name and address of each member.

b. The name and address of each manager.

c. The name and address of the limited liability company, the resident agent of the limited liability company, and the name of the state in which the limited liability company was organized.

(f) If applicable, the name and address of each affiliate of ~~member of the affiliated group of which~~ the applicant ~~is a member~~.

(g)~~1.~~ The applicant's gross annual receipts attributable to prescription drug wholesale distribution activities for the previous tax year. ~~For an application for a new permit, the estimated annual dollar volume of prescription drug sales of the applicant, the estimated annual percentage of the applicant's total company sales that are prescription drugs, the applicant's estimated annual total dollar volume of purchases of prescription drugs, and the applicant's estimated annual total dollar volume of prescription drug purchases directly from manufacturers.~~

~~2. For an application to renew a permit, the total dollar volume of prescription drug sales in the previous year, the total dollar volume of prescription drug sales made in the~~

~~previous 6 months, the percentage of total company sales that were prescription drugs in the previous year, the total dollar volume of purchases of prescription drugs in the previous year, and the total dollar volume of prescription drug purchases directly from manufacturers in the previous year.~~

~~Such portions of the information required pursuant to this paragraph which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051.~~

(h) The tax year of the applicant.

(i) A copy of the deed for the property on which applicant's establishment is located, if the establishment is owned by the applicant, or a copy of the applicant's lease for the property on which applicant's establishment is located that has an original term of not less than 1 calendar year, if the establishment is not owned by the applicant.

(j) A list of all licenses and permits issued to the applicant by any other state which authorize the applicant to purchase or possess prescription drugs.

(k) The name of the manager of the establishment that is applying for the permit or to renew the permit, the next four highest ranking employees responsible for prescription drug wholesale operations for the establishment, and the name of all affiliated parties for the establishment, together with the personal information statement and fingerprints required pursuant to subsection (9) for each of such persons.

(l) The name of each of the applicant's designated representatives as required by subsection (15) ~~(16)~~, together

with the personal information statement and fingerprints required pursuant to subsection (9) for each such person.

(m) Evidence of a surety bond in this state or any other state in the United States in the amount of $100,000. If the annual gross receipts of the applicant's previous tax year is $10 million or less, evidence of a surety bond in the amount of $25,000. The specific language of the surety bond must include the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund. In lieu of the surety bond, the applicant may provide other equivalent security such as an irrevocable letter of credit, or a deposit in a trust account or financial institution, which includes the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund. The purpose of the bond or other security is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later. ~~For an applicant that is a secondary wholesale distributor, each of the following:~~

~~1. A personal background information statement containing the background information and fingerprints required pursuant to subsection (9) for each person named in the applicant's response to paragraphs (k) and (l) and for each affiliated party of the~~

~~applicant.~~

~~2. If any of the five largest shareholders of the corporation seeking the permit is a corporation, the name, address, and title of each corporate officer and director of each such corporation; the name and address of such corporation; the name of such corporation's resident agent, such corporation's resident agent's address, and such corporation's state of its incorporation; and the name and address of each shareholder of such corporation that owns 5 percent or more of the stock of such corporation.~~

~~3. The name and address of all financial institutions in which the applicant has an account which is used to pay for the operation of the establishment or to pay for drugs purchased for the establishment, together with the names of all persons that are authorized signatories on such accounts. The portions of the information required pursuant to this subparagraph which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051.~~

~~4. The sources of all funds and the amounts of such funds used to purchase or finance purchases of prescription drugs or to finance the premises on which the establishment is to be located.~~

~~5. If any of the funds identified in subparagraph 4. were borrowed, copies of all promissory notes or loans used to obtain such funds.~~

(n) For establishments used in wholesale distribution, proof of an inspection conducted by the department, the United States Food and Drug Administration, or another governmental

entity charged with the regulation of good manufacturing practices related to wholesale distribution of prescription drugs, within timeframes set forth by the department in departmental rules, which demonstrates substantial compliance with current good manufacturing practices applicable to wholesale distribution of prescription drugs. The department may recognize another state's inspection of a wholesale distributor located in that state if such state's laws are deemed to be substantially equivalent to the law of this state by the department. The department may accept an inspection by a third-party accreditation or inspection service which meets the criteria set forth in department rule.

(o) ~~(n)~~ Any other relevant information that the department requires~~, including, but not limited to, any information related to whether the applicant satisfies the definition of a primary wholesale distributor or a secondary wholesale distributor~~.

(p) ~~(o)~~ Documentation of the credentialing policies and procedures required by s. 499.0121(15).

(9)(a) Each person required by subsection (8) or subsection (15) to provide a personal information statement and fingerprints shall provide the following information to the department on forms prescribed by the department:

1. The person's places of residence for the past 7 years.

2. The person's date and place of birth.

3. The person's occupations, positions of employment, and offices held during the past 7 years.

4. The principal business and address of any business, corporation, or other organization in which each such office of the person was held or in which each such occupation or position

of employment was carried on.

5. Whether the person has been, during the past 7 years, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

6. Whether, during the past 7 years, the person has been enjoined, temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control, or distribution of prescription drugs, together with details concerning any such event.

7. A description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past 4 ~~7~~ years, which manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which such businesses were named as a party.

8. A description of any felony criminal offense of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony in this state must be reported. If the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the department a copy of the final written order of disposition.

9. A photograph of the person taken in the previous 180 ~~30~~ days.

10. A set of fingerprints for the person on a form and

under procedures specified by the department, together with payment of an amount equal to the costs incurred by the department for the criminal record check of the person.

11. The name, address, occupation, and date and place of birth for each member of the person's immediate family who is 18 years of age or older. As used in this subparagraph, the term "member of the person's immediate family" includes the person's spouse, children, parents, siblings, the spouses of the person's children, and the spouses of the person's siblings.

12. Any other relevant information that the department requires.

(b) The information required pursuant to paragraph (a) shall be provided under oath.

(c) The department shall submit the fingerprints provided by a person for initial licensure to the Department of Law Enforcement for a statewide criminal record check and for forwarding to the Federal Bureau of Investigation for a national criminal record check of the person. The department shall submit the fingerprints provided by a person as a part of a renewal application to the Department of Law Enforcement for a statewide criminal record check, and for forwarding to the Federal Bureau of Investigation for a national criminal record check, for the initial renewal of a permit after January 1, 2004; for any subsequent renewal of a permit, the department shall submit the required information for a statewide and national criminal record check of the person. Any person who as a part of an initial permit application or initial permit renewal after January 1, 2004, submits to the department a set of fingerprints required for the criminal record check required in this

paragraph are ~~shall~~ not ~~be~~ required to provide a subsequent set of fingerprints for a criminal record check to the department, if the person has undergone a criminal record check as a condition of the issuance of an initial permit or the initial renewal of a permit of an applicant after January 1, 2004. The department is authorized to contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for registration, certification, or the licensure process or where criminal history record checks are required.

(d) For purposes of applying for renewal of a permit under subsection (8) or certification under subsection (16), a person may submit the following in lieu of satisfying the requirements of paragraphs (a), (b), and (c):

1. A photograph of the individual taken within 180 days; and

2. A copy of the personal information statement form most recently submitted to the department and a certification under oath, on a form specified by the department, that the individual has reviewed the previously submitted personal information statement form and that the information contained therein remains unchanged.

(10) The department may deny an application for a permit or refuse to renew a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor if:

(a) The applicant has not met the requirements for the permit.

(b) The management, officers, or directors of the applicant

or any affiliated party are found by the department to be incompetent or untrustworthy.

(c) The applicant is so lacking in experience in managing a wholesale distributor as to make the issuance of the proposed permit hazardous to the public health.

(d) The applicant is so lacking in experience in managing a wholesale distributor as to jeopardize the reasonable promise of successful operation of the wholesale distributor.

(e) The applicant is lacking in experience in the distribution of prescription drugs.

(f) The applicant's past experience in manufacturing or distributing prescription drugs indicates that the applicant poses a public health risk.

(g) The applicant is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been detrimental to the public health.

(h) The applicant, or any affiliated party, has been found guilty of or has pleaded guilty or nolo contendere to any felony or crime punishable by imprisonment for 1 year or more under the laws of the United States, any state, or any other country, regardless of whether adjudication of guilt was withheld.

(i) The applicant or any affiliated party has been charged with a felony in a state or federal court and the disposition of that charge is pending during the application review or renewal review period.

(j) The applicant has furnished false or fraudulent information or material in any application made in this state or any other state in connection with obtaining a permit or license

to manufacture or distribute drugs, devices, or cosmetics.

(k) That a federal, state, or local government permit currently or previously held by the applicant, or any affiliated party, for the manufacture or distribution of any drugs, devices, or cosmetics has been disciplined, suspended, or revoked and has not been reinstated.

(l) The applicant does not possess the financial or physical resources to operate in compliance with the permit being sought, this chapter, and the rules adopted under this chapter.

(m) The applicant or any affiliated party receives, directly or indirectly, financial support and assistance from a person who was an affiliated party of a permittee whose permit was subject to discipline or was suspended or revoked, other than through the ownership of stock in a publicly traded company or a mutual fund.

(n) The applicant or any affiliated party receives, directly or indirectly, financial support and assistance from a person who has been found guilty of any violation of this part or chapter 465, chapter 501, or chapter 893, any rules adopted under this part or those chapters, any federal or state drug law, or any felony where the underlying facts related to drugs, regardless of whether the person has been pardoned, had her or his civil rights restored, or had adjudication withheld, other than through the ownership of stock in a publicly traded company or a mutual fund.

(o) The applicant for renewal of a permit under s. 499.01(2)(e) or (f) ~~499.01(2)(d) or (c)~~ has not actively engaged in the wholesale distribution of prescription drugs, as

demonstrated by the regular and systematic distribution of prescription drugs throughout the year as evidenced by not fewer than 12 wholesale distributions in the previous year and not fewer than three wholesale distributions in the previous 6 months.

(p) Information obtained in response to s. 499.01(2)(e) or (f) ~~499.01(2)(d) or (c)~~ demonstrates it would not be in the best interest of the public health, safety, and welfare to issue a permit.

(q) The applicant does not possess the financial standing and business experience for the successful operation of the applicant.

(r) The applicant or any affiliated party has failed to comply with the requirements for manufacturing or distributing prescription drugs under this part, similar federal laws, similar laws in other states, or the rules adopted under such laws.

(11) Upon approval of the application by the department and payment of the required fee, the department shall issue or renew a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor permit to the applicant.

~~(12) For a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor:~~

~~(a) The department shall adopt rules for the annual renewal of permits. At least 90 days before the expiration of a permit, the department shall forward a permit renewal notification and renewal application to the prescription drug wholesale distributor or out-of-state prescription drug wholesale~~

~~distributor at the mailing address of the permitted establishment on file with the department. The permit renewal notification must state conspicuously the date on which the permit for the establishment will expire and that the establishment may not operate unless the permit for the establishment is renewed timely.~~

~~(b) A permit, unless sooner suspended or revoked, automatically expires 1 year after the last day of the anniversary month in which the permit was originally issued. A permit may be renewed by making application for renewal on forms furnished by the department and paying the appropriate fees. If a renewal application and fee are submitted and postmarked after 45 days prior to the expiration date of the permit, the permit may be renewed only upon payment of a late renewal fee of $100, plus the required renewal fee. A permittee that has submitted a renewal application in accordance with this paragraph may continue to operate under its permit, unless the permit is suspended or revoked, until final disposition of the renewal application.~~

~~(c) Failure to renew a permit in accordance with this section precludes any future renewal of that permit. If a permit issued pursuant to this section has expired and cannot be renewed, before an establishment may engage in activities that require a permit under this part, the establishment must submit an application for a new permit; pay the applicable application fee, initial permit fee, and all applicable penalties; and be issued a new permit by the department.~~

(12) ~~(13)~~ A person that engages in wholesale distribution of prescription drugs in this state must have a wholesale

distributor's permit issued by the department, except as noted in this section. Each establishment must be separately permitted except as noted in this subsection.

(a) A separate establishment permit is not required when a permitted prescription drug wholesale distributor consigns a prescription drug to a pharmacy that is permitted under chapter 465 and located in this state, provided that:

1. The consignor wholesale distributor notifies the department in writing of the contract to consign prescription drugs to a pharmacy along with the identity and location of each consignee pharmacy;

2. The pharmacy maintains its permit under chapter 465;

3. The consignor wholesale distributor, which has no legal authority to dispense prescription drugs, complies with all wholesale distribution requirements of s. ~~ss.~~ 499.0121 ~~and 499.01212~~ with respect to the consigned drugs and maintains records documenting the transfer of title or other completion of the wholesale distribution of the consigned prescription drugs;

4. The distribution of the prescription drug is otherwise lawful under this chapter and other applicable law;

5. Open packages containing prescription drugs within a pharmacy are the responsibility of the pharmacy, regardless of how the drugs are titled; and

6. The pharmacy dispenses the consigned prescription drug in accordance with the limitations of its permit under chapter 465 or returns the consigned prescription drug to the consignor wholesale distributor. In addition, a person who holds title to prescription drugs may transfer the drugs to a person permitted or licensed to handle the reverse distribution or destruction of

drugs. Any other distribution by and means of the consigned prescription drug by any person, not limited to the consignor wholesale distributor or consignee pharmacy, to any other person is prohibited.

(b) A wholesale distributor's permit is not required for the one-time transfer of title of a pharmacy's lawfully acquired prescription drug inventory by a pharmacy with a valid permit issued under chapter 465 to a consignor prescription drug wholesale distributor, permitted under this chapter, in accordance with a written consignment agreement between the pharmacy and that wholesale distributor if the permitted pharmacy and the permitted prescription drug wholesale distributor comply with all of the provisions of paragraph (a) and the prescription drugs continue to be within the permitted pharmacy's inventory for dispensing in accordance with the limitations of the pharmacy permit under chapter 465. A consignor drug wholesale distributor may not use the pharmacy as a wholesale distributor through which it distributes the prescription drugs to other pharmacies. Nothing in this section is intended to prevent a wholesale distributor from obtaining this inventory in the event of nonpayment by the pharmacy.

(c) A separate establishment permit is not required when a permitted prescription drug wholesale distributor operates temporary transit storage facilities for the sole purpose of storage, for up to 16 hours, of a delivery of prescription drugs when the wholesale distributor was temporarily unable to complete the delivery to the recipient.

(d) The department shall require information from each wholesale distributor as part of the permit and renewal of such

permit, as required under this section.

(13)~~(14)~~ Personnel employed in wholesale distribution must have appropriate education and experience to enable them to perform their duties in compliance with state permitting requirements.

(14)~~(15)~~ The name of a permittee or establishment on a prescription drug wholesale distributor permit or an out-of-state prescription drug wholesale distributor permit may not include any indicia of attainment of any educational degree, any indicia that the permittee or establishment possesses a professional license, or any name or abbreviation that the department determines is likely to cause confusion or mistake or that the department determines is deceptive, including that of any other entity authorized to purchase prescription drugs.

(15)~~(16)~~(a) Each establishment that is issued an initial or renewal permit as a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor must designate in writing to the department at least one natural person to serve as the designated representative of the wholesale distributor. Such person must have an active certification as a designated representative from the department.

(b) To be certified as a designated representative, a natural person must:

1. Submit an application on a form furnished by the department and pay the appropriate fees.

2. Be at least 18 years of age.

3. Have at least 2 years of verifiable full-time:

a. Work experience in a pharmacy licensed in this state or

another state, where the person's responsibilities included, but were not limited to, recordkeeping for prescription drugs;

b. Managerial experience with a prescription drug wholesale distributor licensed in this state or in another state; or

c. Managerial experience with the United States Armed Forces, where the person's responsibilities included, but were not limited to, recordkeeping, warehousing, distributing, or other logistics services pertaining to prescription drugs.

4. Receive a passing score of at least 75 percent on an examination given by the department regarding federal laws governing distribution of prescription drugs and this part and the rules adopted by the department governing the wholesale distribution of prescription drugs. This requirement shall be effective 1 year after the results of the initial examination are mailed to the persons that took the examination. The department shall offer such examinations at least four times each calendar year.

5. Provide the department with a personal information statement and fingerprints pursuant to subsection (9).

(c) The department may deny an application for certification as a designated representative or may suspend or revoke a certification of a designated representative pursuant to s. 499.067.

(d) A designated representative:

1. Must be actively involved in and aware of the actual daily operation of the wholesale distributor.

2. Must be employed full time in a managerial position by the wholesale distributor.

3. Must be physically present at the establishment during

normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation, or other authorized absence.

4. May serve as a designated representative for only one wholesale distributor at any one time.

(e) A wholesale distributor must notify the department when a designated representative leaves the employ of the wholesale distributor. Such notice must be provided to the department within 10 business days after the last day of designated representative's employment with the wholesale distributor.

(f) A wholesale distributor may not operate under a prescription drug wholesale distributor permit or an out-of-state prescription drug wholesale distributor permit for more than 10 business days after the designated representative leaves the employ of the wholesale distributor, unless the wholesale distributor employs another designated representative and notifies the department within 10 business days of the identity of the new designated representative.

Section 7. Section 499.01201, Florida Statutes, is amended to read:

499.01201 Agency for Health Care Administration review and use of statute and rule violation or compliance data.—Notwithstanding any other provision ~~provisions~~ of law ~~to the contrary~~, the Agency for Health Care Administration may not:

(1) Review or use any violation or alleged violation of s. 499.0121(6) ~~or s. 499.01212~~, or any rules adopted under that section ~~those sections~~, as a ground for denying or withholding any payment of a Medicaid reimbursement to a pharmacy licensed under chapter 465; or

(2) Review or use compliance with s. 499.0121(6) ~~or s. 499.01212~~, or any rules adopted under that section ~~those sections~~, as the subject of any audit of Medicaid-related records held by a pharmacy licensed under chapter 465.

Section 8. Paragraph (d) of subsection (4), subsection (6), and paragraph (b) of subsection (15) of section 499.0121, Florida Statutes, are amended to read:

499.0121 Storage and handling of prescription drugs; recordkeeping.—The department shall adopt rules to implement this section as necessary to protect the public health, safety, and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

(4) EXAMINATION OF MATERIALS AND RECORDS.—

(d) Upon receipt, a wholesale distributor must review records required under this section for the acquisition of prescription drugs for accuracy and completeness, considering the total facts and circumstances surrounding the transactions and the wholesale distributors involved. ~~This includes authenticating each transaction listed on a pedigree paper, as defined in s. 499.003(37).~~

(6) RECORDKEEPING.—The department shall adopt rules that require keeping such records of prescription drugs, including active pharmaceutical ingredients, as are necessary for the protection of the public health.

(a) ~~Wholesale~~ Distributors of prescription drugs and active pharmaceutical ingredients must establish and maintain inventories and records of all transactions regarding the

receipt and distribution or other disposition of prescription drugs and active pharmaceutical ingredients. These records must provide a complete audit trail from receipt to sale or other disposition, be readily retrievable for inspection, and include, at a minimum, the following information:

1. The source of the prescription drugs or active pharmaceutical ingredients, including the name and principal address of the seller or transferor, and the address of the location from which the prescription drugs were shipped;

2. The name, principal address, and state license permit or registration number of the person authorized to purchase prescription drugs or active pharmaceutical ingredients;

3. The name, strength, dosage form, and quantity of the prescription drugs received and distributed or disposed of;

4. The dates of receipt and distribution or other disposition of the prescription drugs or active pharmaceutical ingredients; and

5. Any financial documentation supporting the transaction.

(b) Inventories and records must be made available for inspection and photocopying by authorized federal, state, or local officials for a period of 2 years following disposition of the drugs or 3 years after the creation of the records, whichever period is longer.

(c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means must be readily available for authorized inspection during the retention period. Records that are kept at a central location outside of this state and that are not electronically retrievable must be made available for

inspection within 2 working days after a request by an authorized official of a federal, state, or local law enforcement agency. Records that are maintained at a central location within this state must be maintained at an establishment that is permitted pursuant to this part and must be readily available.

(d) Each manufacturer or repackager of medical devices, over-the-counter drugs, or cosmetics must maintain records that include the name and principal address of the seller or transferor of the product, the address of the location from which the product was shipped, the date of the transaction, the name and quantity of the product involved, and the name and principal address of the person who purchased the product.

~~(c) When pedigree papers are required by this part, a wholesale distributor must maintain the pedigree papers separate and distinct from other records required under this part.~~

(15) DUE DILIGENCE OF PURCHASERS.—

(b) A wholesale distributor must take reasonable measures to identify its customers, understand the normal and expected transactions conducted by those customers, and identify those transactions that are suspicious in nature. A wholesale distributor must establish internal policies and procedures for identifying suspicious orders and preventing suspicious transactions. A wholesale distributor must assess orders for more ~~greater~~ than 7,500 ~~5,000~~ unit doses of any one controlled substance in any one month to determine whether the purchase is reasonable. In making such assessments, a wholesale distributor may consider the purchasing entity's clinical business needs, location, and population served, in addition to other factors

established in the distributor's policies and procedures. A wholesale distributor must report to the department any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of the law. The wholesale distributor shall maintain records that document the report submitted to the department in compliance with this paragraph.

Section 9. Subsection (4) of section 499.015, Florida Statues, is amended to read:

499.015 Registration of drugs, devices, and cosmetics; issuance of certificates of free sale.—

(4) Unless a registration is renewed, it expires 2 years after the last day of the month in which it was issued. Any product registration issued or renewed on or after July 1, 2016, shall expire on the same date as the manufacturer or repackager permit of the person seeking to register the product. If the first product registration issued to a person on or after July 1, 2016, expires less than 366 days after issuance, the fee for product registration shall be $15. If the first product registration issued to a person on or after July 1, 2016, expires more than 365 days after issuance, the fee for product registration shall be $30. The department may issue a stop-sale notice or order against a person that is subject to the requirements of this section and that fails to comply with this section within 31 days after the date the registration expires. The notice or order shall prohibit such person from selling or causing to be sold any drugs, devices, or cosmetics covered by

this part until he or she complies with the requirements of this section.

Section 10. Subsection (1) of section 499.03, Florida Statutes, is amended to read:

499.03 Possession of certain drugs without prescriptions unlawful; exemptions and exceptions.—

(1) A person may not possess, or possess with intent to sell, dispense, or deliver, any habit-forming, toxic, harmful, or new drug subject to s. 499.003(32) ~~499.003(33)~~, or prescription drug as defined in s. 499.003(40) ~~499.003(43)~~, unless the possession of the drug has been obtained by a valid prescription of a practitioner licensed by law to prescribe the drug. However, this section does not apply to the delivery of such drugs to persons included in any of the classes named in this subsection, or to the agents or employees of such persons, for use in the usual course of their businesses or practices or in the performance of their official duties, as the case may be; nor does this section apply to the possession of such drugs by those persons or their agents or employees for such use:

(a) A licensed pharmacist or any person under the licensed pharmacist's supervision while acting within the scope of the licensed pharmacist's practice;

(b) A licensed practitioner authorized by law to prescribe prescription drugs or any person under the licensed practitioner's supervision while acting within the scope of the licensed practitioner's practice;

(c) A qualified person who uses prescription drugs for lawful research, teaching, or testing, and not for resale;

(d) A licensed hospital or other institution that procures

such drugs for lawful administration or dispensing by practitioners;

(e) An officer or employee of a federal, state, or local government; or

(f) A person that holds a valid permit issued by the department pursuant to this part which authorizes that person to possess prescription drugs.

Section 11. Paragraphs (i) through (p) of subsection (1) of section 499.05, Florida Statutes, are amended to read:

499.05 Rules.—

(1) The department shall adopt rules to implement and enforce this chapter with respect to:

(i) Additional conditions that qualify as an emergency medical reason under s. 499.003(48)(b)2. ~~499.003(53)(b)2.~~ or s. 499.82.

~~(j) Procedures and forms relating to the pedigree paper requirement of s. 499.01212.~~

(j) ~~(k)~~ The protection of the public health, safety, and welfare regarding good manufacturing practices that manufacturers and repackagers must follow to ensure the safety of the products.

(k) ~~(l)~~ Information required from each retail establishment pursuant to s. 499.012(3) or s. 499.83(2)(c), including requirements for prescriptions or orders.

(l) ~~(m)~~ The recordkeeping, storage, and handling with respect to each of the distributions of prescription drugs specified in s. 499.003(48)(a)-(v) ~~499.003(53)(a)-(d)~~ or s. 499.82(14).

~~(n) Alternatives to compliance with s. 499.01212 for a~~

~~prescription drug in the inventory of a permitted prescription drug wholesale distributor as of June 30, 2006, and the return of a prescription drug purchased prior to July 1, 2006. The department may specify time limits for such alternatives.~~

(m) ~~(o)~~ Wholesale distributor reporting requirements of s. 499.0121(14).

(n) ~~(p)~~ Wholesale distributor credentialing and distribution requirements of s. 499.0121(15).

Section 12. Subsection (7) of section 499.051, Florida Statutes, is amended to read:

499.051 Inspections and investigations.—

(7) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation and the enforcement action are completed. However, trade secret information contained therein as defined by s. 812.081(1)(c) shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as long as the information is retained by the department. This subsection does not prohibit the department from using such information for regulatory or enforcement proceedings under this chapter or from providing such information to any law enforcement agency or any other regulatory agency. However, the receiving agency shall keep such records confidential and exempt as provided in this subsection. ~~In addition, this subsection is not intended to prevent compliance with the provisions of s. 499.01212, and the pedigree papers required in that section shall not be deemed a trade secret.~~

Section 13. Subsection (8) is added to section 499.066, Florida Statutes, to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(8)(a) The department shall adopt rules to permit the issuance of remedial, nondisciplinary citations. A citation shall be issued to the person alleged to have committed a violation and contain the person's name, address, and license number, if applicable, a brief factual statement, the sections of the law allegedly violated, and the monetary assessment and or other remedial measures imposed. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation pursuant to s. 499.051. If the person does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and does not constitute discipline.

(b) The department shall adopt rules designating violations for which a citation may be issued. The rules shall designate as citable those violations for which there is no substantial threat to the public health, safety, or welfare.

(c) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to the citation.

(d) A citation must be issued within 12 months after the filing of the complaint that is the basis for the citation.

(e) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the

person's last known address of record with the department or to the person's Florida registered agent.

(f) The department has authority to, and shall adopt rules to, designate those violations for which a person is subject to the issuance of a citation and designate the monetary assessments and or other remedial measures that must be taken for those violations. The department has continuous authority to amend its rules adopted pursuant to this section.

Section 14. Subsection (14) of section 499.82, Florida Statutes, is amended to read:

499.82 Definitions.—As used in this part, the term:

(14) "Wholesale distribution" means the distribution of medical gas to a person other than a consumer or patient. Wholesale distribution of medical gases does not include:

(a) The sale, purchase, or trade of a medical gas; an offer to sell, purchase, or trade a medical gas; or the dispensing of a medical gas pursuant to a prescription;

(b) Activities exempt from the definition of wholesale distribution in s. 499.003; or

(c) The sale, purchase, or trade of a medical gas or an offer to sell, purchase, or trade a medical gas for emergency medical reasons~~; or~~

~~(d) Other transactions excluded from the definition of wholesale distribution under the federal act or regulations implemented under the federal act related to medical gas~~.

Section 15. Subsection (4) of section 499.89, Florida Statutes, is amended to read:

499.89 Recordkeeping.—

~~(4) A pedigree paper is not required for distributing or~~

~~dispensing medical gas.~~

Section 16. Section 499.01212, Florida Statutes, is repealed.

Section 17. Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

409.9201 Medicaid fraud.—

(1) As used in this section, the term:

(a) "Prescription drug" means any drug, including, but not limited to, finished dosage forms or active ingredients that are subject to, defined in, or described in s. 503(b) of the Federal Food, Drug, and Cosmetic Act or in s. 465.003(8), s. 499.003(47) ~~499.003(52)~~, s. 499.007(13), or s. 499.82(10).

The value of individual items of the legend drugs or goods or services involved in distinct transactions committed during a single scheme or course of conduct, whether involving a single person or several persons, may be aggregated when determining the punishment for the offense.

Section 18. Paragraph (b) of subsection (1) of section 499.067, Florida Statutes, is amended to read:

499.067 Denial, suspension, or revocation of permit, certification, or registration.—

(1)

(b) The department may deny an application for a permit or certification, or suspend or revoke a permit or certification, if the department finds that:

1. The applicant is not of good moral character or that it would be a danger or not in the best interest of the public health, safety, and welfare if the applicant were issued a

permit or certification.

2. The applicant has not met the requirements for the permit or certification.

3. The applicant is not eligible for a permit or certification for any of the reasons enumerated in s. 499.012.

4. The applicant, permittee, or person certified under s. 499.012(15) ~~s. 499.012(16)~~ demonstrates any of the conditions enumerated in s. 499.012.

5. The applicant, permittee, or person certified under s. 499.012(15) ~~s. 499.012(16)~~ has committed any violation of this chapter.

Section 19. Subsection (1) of section 794.075, Florida Statutes, is amended to read:

794.075 Sexual predators; erectile dysfunction drugs.—

(1) A person may not possess a prescription drug, as defined in s. 499.003(40) ~~499.003(43)~~, for the purpose of treating erectile dysfunction if the person is designated as a sexual predator under s. 775.21.

Section 20. Paragraphs (d), (f), (i), and (j) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description

316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements ~~pedigree papers~~.
~~499.0051(2)~~	~~3rd~~	~~Failure to authenticate pedigree papers.~~
499.0051(5) ~~499.0051(6)~~	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.

784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.

787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted

		burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s.

		893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.

843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness,

		victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.

499.0051(2) ~~499.0051(3)~~	2nd	Knowing forgery of transaction history, transaction information, or transaction statement ~~pedigree papers~~.
499.0051(3) ~~499.0051(4)~~	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4) ~~499.0051(5)~~	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.

784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.

790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or

		older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.

812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.

836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community

		supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.

409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(8) ~~499.0051(9)~~	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.

775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.

787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.

787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but

			younger than 18 years; offender 18 years or older.
2802			
	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
2803			
	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
2804			
	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2805			
	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
2806			
	794.08(2)	1st	Female genital mutilation; victim

			younger than 18 years of age.
2807			
	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
2808			
	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
2809			
	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
2810			
	812.135(2)(b)	1st	Home-invasion robbery with weapon.
2811			
	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2812			
	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under

		supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.

859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.

893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.

896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

(j) LEVEL 10

Florida Statute	Felony Degree	Description
499.0051(9) ~~499.0051(10)~~	1st	Knowing sale or purchase of contraband prescription drugs resulting in death.
782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
782.07(3)	1st	Aggravated manslaughter of a child.

787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(g)	Life	Human trafficking for commercial sexual activity of a child under the age of 18 or mentally defective or incapacitated person.
787.06(4)(a)	Life	Selling or buying of minors into human trafficking.
794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force

		to cause serious injury.
812.135(2)(a)	1st,PBL	Home-invasion robbery with firearm or other deadly weapon.
876.32	1st	Treason against the state.

Section 21. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1604
INTRODUCER:	Health Policy Committee and Senator Grimsley
SUBJECT:	Drugs, Devices, and Cosmetics
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
3.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1604 updates the Florida Drug and Cosmetic Act (Act) to bring it into conformity with the federal Food, Drug and Cosmetic Act (federal act). Recent amendments to the federal act preempted Florida's regulatory structure. The bill replaces provisions relating to pedigree papers with federal requirements for a transaction history, transaction information, or transaction statement for certain recordkeeping for the manufacture and distribution of prescription drugs. Certain activities are exempted from the definition of wholesale distribution in order to conform regulatory oversight in Florida to the federal regulatory scheme.

The bill provides for administrative efficiencies and cost savings for:

- Initial and renewal permitting for prescription drug wholesale distributors and out-of-state prescription drug wholesale distributors by eliminating the distinction between primary and secondary wholesalers and the supplemental information required of a secondary wholesaler for permitting;
- Allowing certain key personnel to submit an affidavit that information submitted on a previous personal statement remains unchanged;
- Modifying the requirement for a surety bond; and
- Authorizing the Department of Business and Professional Regulation (DBPR) to contract with a vendor or enter into interagency agreements for electronic fingerprinting.

The bill establishes a nonresident prescription drug repackager permit, along with the requirement to obtain such a permit if a repackager located outside the state distributes its

repackaged prescription drugs into the state. This repackager is also required to comply with provisions applicable to prescription drug manufacturers. The DBPR must establish a virtual prescription drug manufacturer permit and a virtual out-of-state prescription drug manufacturer permit for manufacturers that do not physically manufacture and possess their prescription drugs.

The DBPR is also authorized to issue non-disciplinary citations for violations of the Act for which there is no substantial threat to the public health, safety, or welfare.

The bill has an indeterminate, but most likely insignificant, fiscal impact on state funds.

This bill is effective July 1, 2016.

II. Present Situation:

The Florida Drug and Cosmetic Act (Act) is found in ch. 499, F.S. The purpose of the Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The DBPR is responsible for regulating and enforcing the Act and is specifically charged with administering and enforcing the Act to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.[1]

In 2003, the Legislature enacted the Prescription Drug Protection Act,[2] which put in place strong safeguards for the distribution of prescription drugs in, into, and from this state. This legislation was predicated on the findings and recommendations of the report of the Seventeenth Statewide Grand Jury in its First Interim Report to the Legislature.[3] That grand jury was called to examine, among other matters, the safety of prescription drugs in Florida. In particular, they examined the situation concerning the sale and re-sale of prescription drugs in the wholesale market.

The Prescription Drug Protection Act required prescription drug wholesalers to provide pedigree papers (a transaction history for tracing a prescription drug through the market) for the wholesale distribution of prescription drugs, strengthened permitting requirements for prescription drug wholesale distributors, especially for wholesale distributors that did not purchase directly from drug manufacturers (referred to as secondary wholesalers), and established significant criminal penalties for prescription drug violations related to counterfeiting and diversion.

In 2013, the Drug Quality and Security Act (DQSA) amended the federal act. The DQSA established a uniform national policy for product tracing and other requirements relating to the prescription drug supply chain. The DQSA expressly preempted states from establishing or continuing in effect any requirements for tracing products through the distribution system which are inconsistent with, more stringent than, or in addition to, any requirement applicable under DQSA. The preemption also included prohibiting states from establishing or continuing any standards, requirements, or regulations with respect to wholesale prescription drug distributor or

[1] *See* s 499.002, F.S.
[2] *See* ch. 2003-155, L.O.F.
[3] The report is available at: http://myfloridalegal.com/grandjury17.pdf (last visited Jan. 24, 2016).

third-party logistics provider licensure that are inconsistent with, less stringent than, directly related to, or covered by the standards and requirements of the DQSA.[4]

III. Effect of Proposed Changes:

Section 1 amends s. 499.003, F.S., to revise definitions to conform to the changes made to the Florida Drug and Cosmetic Act in this bill. New definitions are provided for: "active pharmaceutical ingredient"[5] and "affiliate." The following definitions are repealed: "affiliated group," "authenticate," "drop shipment," "normal distribution chain," "pedigree paper," "primary wholesale distributor," and "secondary wholesale distributor." The following definitions are substantially revised:

- "Distribute" means to sell, purchase, trade, deliver, handle, store, or receive. The term does not mean to administer or dispense. Deleted from the definition is the concept of offering to perform any of these activities and the method of distribution, i.e., by passage of title, physical movement, or both. The exemption for billing and invoicing activities is also deleted from the definition, but is addressed as an exception to the definition of wholesale distribution.
- "Manufacturer" is reworded to more accurately describe co-licensed partners and private label distributors. Third party logistics (TPL) providers are deleted from the definition.
- "Wholesale distribution" is clarified that the term includes both the distribution to a person and the receipt by a person, of a prescription drug, other than the consumer or patient. The exceptions to wholesale distribution are expanded and revised. Drug shortages not caused by a public health emergency are not deemed an emergency medical reason for the distribution of a prescription drug by a retail pharmacy. This provision is found in rule, but is now specifically addressed in statute. New exclusions from the definition of wholesale distribution include:
  - Intracompany distribution between members of an affiliate or within a manufacturer;
  - Distribution of a prescription drug by the manufacturer of that prescription drug;
  - Distribution of a prescription drug by a TPL provider in accordance with state and federal law if the TPL provider does not own the drug;
  - Distribution of, or offer to distribute, a prescription drug by an repackager that is registered under the federal act that owned or possessed the drug and which repackaged it;
  - The purchase or other acquisition by a dispenser, hospital, or other health care entity for use by that dispenser, hospital, or other health care entity;
  - Distribution of a prescription drug for the purpose of repacking the drug owned by a hospital for the hospital's use or other health care entity that is under common control with the hospital;
  - Distribution of minimal quantities of prescription drugs by a retail pharmacy to a licensed practitioner for office use in compliance with the Florida Pharmacy Act and its rules;
  - Distribution of an intravenous prescription drug that is intended for replenishment of fluids and electrolytes, or to maintain the equilibrium of water and minerals in the body;
  - Distribution of a prescription drug that is intended for irrigation or sterile water;
  - Distribution of exempt medical convenience kits;

[4] *See* sec. 585 of the Food, Drug, and Cosmetic Act.
[5] The definition of "active pharmaceutical ingredient" is moved from within the definition of "drug."

  - Transport by a common carrier if it does not own the prescription drug;
  - Saleable returns when conducted by a dispenser;
  - Facilitating the distribution of a prescription drug by providing solely administrative services;
  - Distribution of a specially-priced or donated prescription drug by a charitable organization to a licensed health care practitioner, health care clinic permitted pursuant to the Act, or to the Department of Health (DOH) or other governmental health care entity for providing emergency medical services, if the distributor and recipient receive no direct or indirect financial benefit other than tax benefits for charitable contributions; and
  - Distribution of a medical gas in compliance with part III of the Act.
- "Wholesale distributor" means a person other than a manufacturer, a manufacturer's co-licensed partner, a TPL provider, or a repackager, who is engaged in wholesale distribution.

Sections 2, 3, 4, and 20 amend s. 499.005, F.S., relating to prohibited acts; s. 499.0051, F.S., relating to criminal acts; s. 499.006, F.S., relating to adulterated drug or device; and s. 921.0022, F.S., relating to the criminal punishment code. The bill removes references to Florida's pedigree requirements throughout chapter 499, F.S. In addition, the bill replaces the references to "pedigree papers" with references to "transaction history", "transaction information", or "transaction statement" to conform to federal requirements, the federal pre-emption of individual state regulation pertaining to certain recordkeeping for the manufacture and distribution of prescription drugs, and changes made by this bill.

Section 5 amends s. 499.01, F.S., relating to permits to:
- Add a nonresident prescription drug repackager permit. This permit is required for any person located outside Florida but within the United States or its territories that repackages prescription drugs and distributes them into Florida. This permittee is required to comply with all provisions and rules that are applicable to prescription drug manufacturers and must be registered as a drug establishment with the federal Food and Drug Administration (FDA).
- Require the DBPR to adopt rules for issuing a virtual prescription drug manufacturer permit and virtual nonresident prescription drug manufacturer permit to a person that manufactures prescription drugs but does not make or take physical possession of any prescription drugs, for example when a contract manufacturer is used. Because these manufacturers do not possess prescription drugs, the DBPR is authorized to exempt them by rule from certain establishment, security, and storage requirements.
- Delete the $100,000 security bond requirement for prescription drug wholesalers and out-of-state prescription drug wholesaler; however a similar, less costly requirement is added to s. 499.012, F.S.
- Require an out-of-state prescription drug wholesaler, a TPL provider, or a nonresident prescription drug manufacturer distributing prescription drug active pharmaceutical ingredients into the state for the manufacture of an approved drug or biologic, which is not licensed by its resident state, to be licensed or registered under the federal act and for the recipient in Florida to maintain documentation of the supplier's compliance.
- Conform requirements of various permits to the repeal of the pedigree paper requirements.
- Remove the restriction that the exemption from permitting for a nonresident prescription drug manufacturer to distribute prescription drug active pharmaceutical ingredients for research is applicable only if the distributions are in limited quantities, require that the label

of a prescription drug active pharmaceutical ingredient bear specific caution statement terminology, and require that a prescription drug manufacturer that obtains an active pharmaceutical ingredient from an exempt manufacturer maintain certain records detailing the specific clinical trials or biostudies for which the ingredient was obtained.
- Exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with current state and federal current good manufacturing practices relating to repackaging. Alternate provisions are made for the labeling of those prescription drugs.

Section 6 amends s. 499.012, F.S., relating to permit application requirements to:
- Clarify that a prescription drug manufacturer permit may be issued to the same address as a licensed nuclear pharmacy, even if the nuclear pharmacy holds a special sterile compounding permit under the Florida Pharmacy Act.
- Authorize the Department of Business and Professional Regulation (DBPR) to issue a retail pharmacy drug wholesale distributor permit to the address of a community pharmacy, even if the community pharmacy holds a special sterile compounding permit, as long as the community pharmacy is not a closed pharmacy.
- Provide that applications pending resolution of a deficiency after two years from the time the DBPR notified the applicant of the deficiency automatically expire.
- Require the DBPR to maintain trade secret information submitted in an application as trade secret.
- Authorize the issuance of four-year permits on selected permit types identified in rule.
- Authorize the DBPR to send a permit renewal notification at least 90 days before the expiration date of all permits which conspicuously notes the expiration date of the permit and that the establishment may not operate unless the permit is renewed timely. The renewal notification will eliminate the costs associated with sending the renewal application.
- For a prescription drug wholesale distributor or out-of-state prescription drug wholesale distributor permit:
    - Require a $100 delinquent fee for a renewal application that is submitted later than 45 days prior to the permit's expiration date.
    - Substitute submission of the applicant's gross annual receipts attributable to prescription drug wholesale distribution activities for the previous tax year in lieu of more extensive information pertaining to prescription drug sales during certain intermediate timeframes and annually, purchases directly from manufacturers for renewal permits, and estimated information for new applicants.
    - Allow a surety bond issued in this state or any other state to satisfy the bond requirement. The amount of the surety bond is tiered based on the applicant's annual gross receipts. A bond of $100,000 is applicable if the annual gross receipts of the applicant's previous tax year is over $10 million, or $25,000 if the annual gross receipts is $10 million or less.
    - Repeal the additional information required to be submitted by secondary wholesalers (wholesalers that did not purchase directly from manufacturers) since the concept of primary wholesale distributor and secondary wholesale distributor is eliminated in this bill.
    - Require proof of establishment inspection by the DBPR, the FDA, or another governmental entity. The DBPR may recognize the inspection conducted by another state if that state's laws are substantially equivalent to the laws in Florida.

- Authorize the DBPR to contract with a vendor or enter into interagency agreements to handle electronic fingerprinting.
- Streamline the renewal requirements for the submission of a personal information statement for certain key individuals by allowing submission of a certification under oath that the most recently submitted statement submitted to the DBPR remains unchanged.

Section 7 amends s. 499.01201, F.S., to make conforming changes by removing obsolete references to the pedigree statutes in ch. 499, F.S.

Section 8 amends s. 499.0121, F.S., relating to the storage and handling of prescription drugs to conform changes associated with the repeal of the pedigree paper requirements and to include standards for active pharmaceutical ingredients that apply to other prescription drugs.

Section 9 amends s. 499.015, F.S., relating to registration of drugs, devices, and cosmetics to synchronize the expiration date of product registrations with the expiration date of the applicable manufacturing or repacking permit.

Section 13 amends s. 499.066, F.S., relating to penalties, to authorize the DBPR to adopt rules identifying low-risk violations of the act and applicable penalties, including monetary assessments and other remedial measures, for which a non-disciplinary citation may be issued. The person to whom a citation is issued may choose, in lieu of accepting the citation, to have the matter investigated more fully and processed according to the full procedures for violations of the Act in which discipline may be imposed. The low-risk violation are ones for which there is no substantial threat to the public health, safety, or welfare.

Section 14 amends s. 499.82, F.S., relating to definitions under ch. 499, Part III, F.S., (medical gas). Specifically, s. 499.82, F.S., amends the definition of "wholesale distribution" to clarify that the exceptions to wholesale distribution listed in the federal act – including the distribution of medical gases – are not included in the exemptions to wholesale distribution in Florida as that term relates to medical gases.

Sections 10, 11, 12, 15, 17, 18 and 19 amend s. 499.03, F.S., relating to possession of prescription drugs, s. 499.05, F.S., relating to rules, s. 499.051, F.S., relating to inspections and investigations, s. 499.89, F.S., relating to recordkeeping, s. 409.9201, F.S., relating to Medicaid fraud, s. 499.067, F.S., relating to denial, suspension or revocation of permit, certification, or registration, and s. 794.075, F.S., relating to sexual predators, respectively, to conform these sections of law to changes made in the bill.

Section 16 repeals s. 499.01212, relating to pedigree papers.

Section 21 provides that the effective date of the act is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1604 updates and conforms the regulations for the distribution of prescription drugs in or into this state and eliminates potential ambiguity between Florida's requirements and a uniform national approach. This uniformity should generate savings by regulated persons. Other changes to permit application submission requirements may streamline initial and renewal administrative paperwork, resulting in efficiencies in time and costs. Anecdotal information received from multiple wholesale distributors suggests that the annual submission of the renewal application consumes approximately 40 hours.

Cost savings associated with the reduction of information that is required to be provided in distributor permit applications and renewals could result in an estimated annual savings of $225,379 to the industry each year and an estimated saving of $1,105 per year per permittee.[6]

Allowing a surety bond that was obtained for licensure in another state to satisfy Florida's requirement for a surety bond for prescription drug wholesale distributors and out-of-state wholesale distributors will generate a cost saving of $100,000 per qualifying permit. The tiered surety bond requirement may also help small businesses.

C. Government Sector Impact:

The bill provides for administrative efficiencies for the Department of Business and Professional Regulations (DBPR) in the regulation and enforcement of the Act which will generate cost savings. The DBPR will annually save $579 in postage from changes to the process for renewal of permits.[7] The DBPR will incur costs for technology changes in order to implement this Act; however, these costs can be absorbed within existing resources.

The bill amends ch. 499, F.S., to bring the statutes into conformity with the federal act, which has three permits not in current Florida law: nonresident repackager, virtual prescription drug manufacturer, and nonresident virtual prescription drug manufacturer.

[6] *See* DBPR, *Senate Bill 1604 Analysis,* p. 13, (on file with the Senate Committee on Health Policy).
[7] *Id*.

The entities that fall into these three new permits are already issued another type of permit by the DBPR. Under the bill, these permittees will be reclassified into the new permits and will not be charged a second time for the current permits. There will be no increased costs to the industry or increase in revenue to the DBPR.[8] These three new permits will impose an initial registration fee of $1,500 and a biennial registration fee of $1,500.[9] The current biennial fees for the virtual prescription drug manufacturer and the nonresident prescription drug manufacturer are $1,500; therefore, the cost will remain the same for these entities. The current biennial fee for the nonresident repackager is $1,600, as these entities are currently permitted as an out-of-state prescription drug wholesale distributor. The $100 difference in this fee is negligible, as the DBPR does not believe that there is a significant number of entities to whom this would apply.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill exempts the distribution of minimal quantities of prescription drugs by a retail pharmacy for office use in compliance with the Florida Pharmacy Act and its rules from the definition of wholesale distribution. However, the requirement for a retail pharmacy drug wholesale distributor permit is still required in s. 499.01(2)(g), F.S., for a retail pharmacy that engages in the wholesale distribution of prescription drugs to practitioners of up to 30 percent of the pharmacy's total annual prescription drug purchases. It is not apparent how these two sections of law are intended to co-exist and additional legislative direction may be warranted.

Lines 1580-1589 exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with *all* current state and federal current good manufacturing practices relating to repackaging. This may be overly broad and might create unreasonable risks for persons receiving those drugs in the rural hospital. Also, this provision may be read as exempting compliance with current good manufacturing practices for all repacked and distributed prescription drugs to all health care entities if at least one of the recipients is a rural hospital.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 499.003, 499.005, 499.0051, 499.006, 499.01, 499.012, 499.01201, 499.0121, 499.015, 499.03, 499.05, 499.051, 499.066, 499.82, 499.89, 409.9201, 499.067, 794.075, and 921.0022.

This bill repeals section 499.01212 of the Florida Statutes.

[8] *Id.*
[9] *Id*.
[10] *Id*.

IX. Additional Information:

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

CS by Health Policy on January 26, 2016:
The CS corrects a reference to a prescription drug manufacturer distributing their prescription drugs as opposed to engaging in the wholesale distribution of those drugs to comport with the federal act. The CS also reinstates the mandatory registration of cosmetic products manufactured in this state.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Grimsley

588-02623-16 20161604c1

A bill to be entitled

An act relating to drugs, devices, and cosmetics; amending s. 499.003, F.S.; providing, revising, and deleting definitions for purposes of the Florida Drug and Cosmetic Act; amending s. 499.005, F.S.; revising prohibited acts related to the distribution of prescription drugs; conforming a cross-reference; amending s. 499.0051, F.S.; prohibiting the distribution of prescription drugs without delivering a transaction history, transaction information, and transaction statement; providing penalties; deleting provisions and revising terminology related to pedigree papers, to conform to changes made by the act; amending s. 499.006, F.S.; conforming provisions; amending s. 499.01, F.S.; requiring nonresident prescription drug repackagers to obtain an operating permit; authorizing a manufacturer to engage in the wholesale distribution of prescription drugs; providing for the issuance of virtual prescription drug manufacturer permits and virtual nonresident prescription drug manufacturer permits to certain persons; providing exceptions from certain virtual manufacturer requirements; requiring a nonresident prescription drug repackager permit for certain persons; deleting surety bond requirements for prescription drug wholesale distributors; requiring that certain persons obtain an out-of-state prescription drug wholesale distributor permit requiring certain third party logistic providers to be licensed; requiring research and development labeling on certain prescription drug active pharmaceutical ingredient packaging; requiring certain manufacturers

588-02623-16 20161604c1

to create and maintain certain records; requiring certain prescription drug distributors to provide certain information to health care entities for which they repackage prescription drugs; amending s. 499.012, F.S.; providing for issuance of a prescription drug manufacturer permit or retail pharmacy drug wholesale distributor permit when an applicant at the same address is a licensed nuclear pharmacy or community pharmacy; providing for the expiration of deficient permit applications; requiring trade secret information submitted by an applicant to be maintained as a trade secret; authorizing the quadrennial renewal of permits; providing for calculation of fees for such permit renewals; revising procedures and application requirements for permit renewals; providing for late renewal fees; allowing a permittee who submits a renewal application to continue operations; removing certain application requirements for renewal of a permit; requiring bonds or other surety of a specified amount; requiring proof of inspection of establishments used in wholesale distribution; authorizing the Department of Business and Professional Regulation to contract for the collection of electronic fingerprints under certain circumstances; providing information that may be submitted in lieu of certain application requirements for specified permits and certifications; removing provisions relating to annual renewal and expiration of permits; conforming cross-references; amending s.

499.01201, F.S.; conforming provisions; amending s. 499.0121, F.S.; revising prescription drug recordkeeping requirements; requiring inventories and records of transactions for active pharmaceutical ingredients; conforming provisions; amending s. 499.015, F.S.; providing for the expiration, renewal, and issuance of certain drug, device, and cosmetic product registrations; providing for product registration fees; amending ss. 499.03, 499.05, and 499.051, F.S.; conforming provisions to changes made by the act; amending s. 499.066, F.S.; authorizing the issuance of nondisciplinary citations; authorizing the department to adopt rules designating violations for which a citation may be issued; authorizing the department to recover investigative costs pursuant to the citation; specifying a time limitation for issuance of a citation; providing for service of a citation; amending s. 499.82, F.S.; revising the definition of "wholesale distribution" for purposes of medical gas requirements; amending s. 499.89, F.S.; conforming provisions; repealing s. 499.01212, F.S., relating to pedigree papers; amending ss. 409.9201, 499.067, 794.075, and 921.0022, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 499.003, Florida Statutes, is amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(1) "Active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or animals.

(2) ~~(1)~~ "Advertisement" means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

(3) "Affiliate" means a business entity that has a relationship with another business entity in which, directly or indirectly:

(a) The business entity controls, or has the power to control, the other business entity; or

(b) A third party controls, or has the power to control, both business entities.

~~(2) "Affiliated group" means an affiliated group as defined by s. 1504 of the Internal Revenue Code of 1986, as amended, which is composed of chain drug entities, including at least 50 retail pharmacies, warehouses, or repackagers, which are members of the same affiliated group. The affiliated group must disclose the names of all its members to the department.~~

(4) ~~(3)~~ "Affiliated party" means:

(a) A director, officer, trustee, partner, or committee member of a permittee or applicant or a subsidiary or service corporation of the permittee or applicant;

(b) A person who, directly or indirectly, manages, controls, or oversees the operation of a permittee or applicant, regardless of whether such person is a partner, shareholder, manager, member, officer, director, independent contractor, or employee of the permittee or applicant;

(c) A person who has filed or is required to file a personal information statement pursuant to s. 499.012(9) or is required to be identified in an application for a permit or to renew a permit pursuant to s. 499.012(8); or

(d) The five largest natural shareholders that own at least 5 percent of the permittee or applicant.

(5) ~~(4)~~ "Applicant" means a person applying for a permit or certification under this part.

~~(5) "Authenticate" means to affirmatively verify upon receipt of a prescription drug that each transaction listed on the pedigree paper has occurred.~~

~~(a) A wholesale distributor is not required to open a sealed, medical convenience kit to authenticate a pedigree paper for a prescription drug contained within the kit.~~

~~(b) Authentication of a prescription drug included in a sealed, medical convenience kit shall be limited to verifying the transaction and pedigree information received.~~

(6) "Certificate of free sale" means a document prepared by the department which certifies a drug, device, or cosmetic, that is registered with the department, as one that can be legally sold in the state.

(7) "Chain pharmacy warehouse" means a ~~wholesale~~ distributor permitted pursuant to s. 499.01 that maintains a physical location for prescription drugs that functions solely as a central warehouse to perform intracompany transfers of such drugs between members of an affiliate ~~to a member of its affiliated group~~.

(8) "Closed pharmacy" means a pharmacy that is licensed under chapter 465 and purchases prescription drugs for use by a limited patient population and not for wholesale distribution or sale to the public. The term does not include retail pharmacies.

(9) "Color" includes black, white, and intermediate grays.

(10) "Color additive" means, with the exception of any material that has been or hereafter is exempt under the federal act, a material that:

(a) Is a dye pigment, or other substance, made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or

(b) When added or applied to a drug or cosmetic or to the human body, or any part thereof, is capable alone, or through reaction with other substances, of imparting color thereto.

(11) "Contraband prescription drug" means any adulterated drug, as defined in s. 499.006, any counterfeit drug, as defined in this section, and also means any prescription drug for which a transaction history, transaction information, or transaction statement ~~pedigree paper~~ does not exist, or for which the transaction history, transaction information, or transaction statement ~~pedigree paper~~ in existence has been forged,

counterfeited, falsely created, or contains any altered, false, or misrepresented matter.

(12) "Cosmetic" means an article, with the exception of soap, that is:

(a) Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or

(b) Intended for use as a component of any such article.

(13) "Counterfeit drug," "counterfeit device," or "counterfeit cosmetic" means a drug, device, or cosmetic which, or the container, seal, or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug, device, or cosmetic manufacturer, processor, packer, or distributor other than the person that in fact manufactured, processed, packed, or distributed that drug, device, or cosmetic and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, that other drug, device, or cosmetic manufacturer, processor, packer, or distributor.

(14) "Department" means the Department of Business and Professional Regulation.

(15) "Device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including its components, parts, or accessories, which is:

(a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, or any supplement thereof,

(b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or

(c) Intended to affect the structure or any function of the body of humans or other animals,

and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(16) "Distribute" or "distribution" means to sell, purchase, trade, deliver, handle, store, or receive ~~to sell; offer to sell; give away; transfer, whether by passage of title, physical movement, or both; deliver; or offer to deliver~~. The term does not mean to administer or dispense ~~and does not include the billing and invoicing activities that commonly follow a wholesale distribution transaction~~.

~~(17) "Drop shipment" means the sale of a prescription drug from a manufacturer to a wholesale distributor, where the wholesale distributor takes title to, but not possession of, the prescription drug, and the manufacturer of the prescription drug ships the prescription drug directly to a chain pharmacy warehouse or a person authorized by law to purchase prescription drugs for the purpose of administering or dispensing the drug, as defined in s. 465.003.~~

(17) ~~(18)~~ "Drug" means an article that is:

(a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of

those publications;

(b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;

(c) Intended to affect the structure or any function of the body of humans or other animals; or

(d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. ~~For purposes of this paragraph, an "active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.~~

(18) ~~(19)~~ "Establishment" means a place of business which is at one general physical location and may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

(19) ~~(20)~~ "Federal act" means the Federal Food, Drug, and

Cosmetic Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

(20) ~~(21)~~ "Freight forwarder" means a person who receives prescription drugs which are owned by another person and designated by that person for export, and exports those prescription drugs.

(21) ~~(22)~~ "Health care entity" means a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or retail pharmacy licensed under state law to deal in prescription drugs. However, a blood establishment is a health care entity that may engage in the wholesale distribution of prescription drugs under s. 499.01(2)(h)1.c. ~~499.01(2)(g)1.c.~~

(22) ~~(23)~~ "Health care facility" means a health care facility licensed under chapter 395.

(23) ~~(24)~~ "Hospice" means a corporation licensed under part IV of chapter 400.

(24) ~~(25)~~ "Hospital" means a facility as defined in s. 395.002 and licensed under chapter 395.

(25) ~~(26)~~ "Immediate container" does not include package liners.

(26) ~~(27)~~ "Label" means a display of written, printed, or graphic matter upon the immediate container of any drug, device, or cosmetic. A requirement made by or under authority of this part or rules adopted under this part that any word, statement, or other information appear on the label is not complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail

package of such drug, device, or cosmetic or is easily legible through the outside container or wrapper.

(27) ~~(28)~~ "Labeling" means all labels and other written, printed, or graphic matters:

(a) Upon a drug, device, or cosmetic, or any of its containers or wrappers; or

(b) Accompanying or related to such drug, device, or cosmetic.

(28) ~~(29)~~ "Manufacture" means the preparation, deriving, compounding, propagation, processing, producing, or fabrication of any drug, device, or cosmetic.

(29) ~~(30)~~ "Manufacturer" means:

(a) A person who holds a New Drug Application, an Abbreviated New Drug Application, a Biologics License Application, or a New Animal Drug Application approved under the federal act or a license issued under s. 351 of the Public Health Service Act, 42 U.S.C. s. 262, for such drug or biologics, or if such drug or biologics is not the subject of an approved application or license, the person who manufactured the drug or biologics ~~prepares, derives, manufactures, or produces a drug, device, or cosmetic~~;

(b) A co-licensed partner of the person described in paragraph (a) who obtains the drug or biologics directly from a person described in paragraph (a), paragraph (c), or this paragraph ~~The holder or holders of a New Drug Application (NDA), an Abbreviated New Drug Application (ANDA), a Biologics License Application (BLA), or a New Animal Drug Application (NADA), provided such application has become effective or is otherwise approved consistent with s. 499.023~~;

(c) An affiliate of a person described in paragraph (a), paragraph (b), or this paragraph that receives the drug or biologics directly from a person described in paragraph (a), paragraph (b), or this paragraph ~~A private label distributor for whom the private label distributor's prescription drugs are originally manufactured and labeled for the distributor and have not been repackaged~~; or

(d) A person who manufactures a device or a cosmetic. ~~A person registered under the federal act as a manufacturer of a prescription drug, who is described in paragraph (a), paragraph (b), or paragraph (c), who has entered into a written agreement with another prescription drug manufacturer that authorizes either manufacturer to distribute the prescription drug identified in the agreement as the manufacturer of that drug consistent with the federal act and its implementing regulations;~~

~~(e) A member of an affiliated group that includes, but is not limited to, persons described in paragraph (a), paragraph (b), paragraph (c), or paragraph (d), which member distributes prescription drugs, whether or not obtaining title to the drugs, only for the manufacturer of the drugs who is also a member of the affiliated group. As used in this paragraph, the term "affiliated group" means an affiliated group as defined in s. 1504 of the Internal Revenue Code of 1986, as amended. The manufacturer must disclose the names of all of its affiliated group members to the department; or~~

~~(f) A person permitted as a third party logistics provider, only while providing warehousing, distribution, or other logistics services on behalf of a person described in paragraph~~

~~(a), paragraph (b), paragraph (c), paragraph (d), or paragraph (e).~~

The term does not include a pharmacy that is operating in compliance with pharmacy practice standards as defined in chapter 465 and rules adopted under that chapter.

(30) ~~(31)~~ "Medical convenience kit" means packages or units that contain combination products as defined in 21 C.F.R. s. 3.2(e)(2).

(31) ~~(32)~~ "Medical gas" means any liquefied or vaporized gas that is a prescription drug, whether alone or in combination with other gases, and as defined in the federal act.

(32) ~~(33)~~ "New drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of that drug; or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under certain conditions, has been recognized for use under such conditions, but which drug has not, other than in those investigations, been used to a material extent or for a material time under such conditions.

~~(34) "Normal distribution chain" means a wholesale distribution of a prescription drug in which the wholesale distributor or its wholly owned subsidiary purchases and receives the specific unit of the prescription drug directly~~

~~from the manufacturer and distributes the prescription drug directly, or through up to two intracompany transfers, to a chain pharmacy warehouse or a person authorized by law to purchase prescription drugs for the purpose of administering or dispensing the drug, as defined in s. 465.003. For purposes of this subsection, the term "intracompany" means any transaction or transfer between any parent, division, or subsidiary wholly owned by a corporate entity.~~

(33) ~~(35)~~ "Nursing home" means a facility licensed under part II of chapter 400.

(34) ~~(36)~~ "Official compendium" means the current edition of the official United States Pharmacopoeia and National Formulary, or any supplement thereto.

~~(37) "Pedigree paper" means a document in written or electronic form approved by the department which contains information required by s. 499.01212 regarding the sale and distribution of any given prescription drug.~~

(35) ~~(38)~~ "Permittee" means any person holding a permit issued under this chapter ~~pursuant to s. 499.012~~.

(36) ~~(39)~~ "Person" means any individual, child, joint venture, syndicate, fiduciary, partnership, corporation, division of a corporation, firm, trust, business trust, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within this state, and any representative, agent, or agency of any of the foregoing, or any other group or combination of the foregoing.

(37) ~~(40)~~ "Pharmacist" means a person licensed under chapter 465.

(38)~~(41)~~ "Pharmacy" means an entity licensed under chapter 465.

(39)~~(42)~~ "Prepackaged drug product" means a drug that originally was in finished packaged form sealed by a manufacturer and that is placed in a properly labeled container by a pharmacy or practitioner authorized to dispense pursuant to chapter 465 for the purpose of dispensing in the establishment in which the prepackaging occurred.

(40)~~(43)~~ "Prescription drug" means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the federal act or s. 465.003(8), s. 499.007(13), subsection (31) ~~(32)~~, or subsection (47) ~~(52)~~, except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

(41)~~(44)~~ "Prescription drug label" means any display of written, printed, or graphic matter upon the immediate container of any prescription drug before it is dispensed ~~prior to its dispensing~~ to an individual patient pursuant to a prescription of a practitioner authorized by law to prescribe.

(42)~~(45)~~ "Prescription label" means any display of written, printed, or graphic matter upon the immediate container of any prescription drug dispensed pursuant to a prescription of a practitioner authorized by law to prescribe.

~~(46) "Primary wholesale distributor" means any wholesale distributor that:~~

~~(a) Purchased 90 percent or more of the total dollar volume~~

~~of its purchases of prescription drugs directly from manufacturers in the previous year; and~~

~~(b)1. Directly purchased prescription drugs from not fewer than 50 different prescription drug manufacturers in the previous year; or~~

~~2. Has, or the affiliated group, as defined in s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member has, not fewer than 250 employees.~~

~~(c) For purposes of this subsection, "directly from manufacturers" means:~~

~~1. Purchases made by the wholesale distributor directly from the manufacturer of prescription drugs; and~~

~~2. Transfers from a member of an affiliated group, as defined in s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member, if:~~

~~a. The affiliated group purchases 90 percent or more of the total dollar volume of its purchases of prescription drugs from the manufacturer in the previous year; and~~

~~b. The wholesale distributor discloses to the department the names of all members of the affiliated group of which the wholesale distributor is a member and the affiliated group agrees in writing to provide records on prescription drug purchases by the members of the affiliated group not later than 48 hours after the department requests access to such records, regardless of the location where the records are stored.~~

(43)~~(47)~~ "Proprietary drug," or "OTC drug," means a patent or over-the-counter drug in its unbroken, original package, which drug is sold to the public by, or under the authority of, the manufacturer or primary distributor thereof, is not

misbranded under the provisions of this part, and can be purchased without a prescription.

(44) ~~(48)~~ "Repackage" includes repacking or otherwise changing the container, wrapper, or labeling to further the distribution of the drug, device, or cosmetic.

(45) ~~(49)~~ "Repackager" means a person who repackages. The term excludes pharmacies that are operating in compliance with pharmacy practice standards as defined in chapter 465 and rules adopted under that chapter.

(46) ~~(50)~~ "Retail pharmacy" means a community pharmacy licensed under chapter 465 that purchases prescription drugs at fair market prices and provides prescription services to the public.

~~(51) "Secondary wholesale distributor" means a wholesale distributor that is not a primary wholesale distributor.~~

(47) ~~(52)~~ "Veterinary prescription drug" means a prescription drug intended solely for veterinary use. The label of the drug must bear the statement, "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian."

(48) ~~(53)~~ "Wholesale distribution" means the distribution of a prescription drug to a person ~~drugs to persons~~ other than a consumer or patient, or the receipt of a prescription drug by a person other than the consumer or patient, but does not include:

(a) Any of the following activities, which is not a violation of s. 499.005(21) if such activity is conducted in accordance with s. 499.01(2)(h) ~~499.01(2)(g)~~:

1. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing

organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of that organization.

2. The distribution ~~sale, purchase, or trade~~ of a prescription drug or an offer to distribute ~~sell, purchase, or trade~~ a prescription drug by a charitable organization described in s. 501(c)(3) of the Internal Revenue Code of 1986, as amended and revised, to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

3. The distribution ~~sale, purchase, or trade~~ of a prescription drug ~~or an offer to sell, purchase, or trade a prescription drug~~ among hospitals or other health care entities that are under common control. For purposes of this subparagraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or otherwise.

4. The distribution ~~sale, purchase, trade, or other transfer~~ of a prescription drug from or for any federal, state, or local government agency or any entity eligible to purchase prescription drugs at public health services prices pursuant to Pub. L. No. 102-585, s. 602 to a contract provider or its subcontractor for eligible patients of the agency or entity under the following conditions:

a. The agency or entity must obtain written authorization for the distribution ~~sale, purchase, trade, or other transfer~~ of a prescription drug under this subparagraph from the Secretary of Business and Professional Regulation or his or her designee.

b. The contract provider or subcontractor must be

authorized by law to administer or dispense prescription drugs.

c. In the case of a subcontractor, the agency or entity must be a party to and execute the subcontract.

d. The contract provider and subcontractor must maintain and produce immediately for inspection all records of movement or transfer of all the prescription drugs belonging to the agency or entity, including, but not limited to, the records of receipt and disposition of prescription drugs. Each contractor and subcontractor dispensing or administering these drugs must maintain and produce records documenting the dispensing or administration. Records that are required to be maintained include, but are not limited to, a perpetual inventory itemizing drugs received and drugs dispensed by prescription number or administered by patient identifier, which must be submitted to the agency or entity quarterly.

e. The contract provider or subcontractor may administer or dispense the prescription drugs only to the eligible patients of the agency or entity or must return the prescription drugs for or to the agency or entity. The contract provider or subcontractor must require proof from each person seeking to fill a prescription or obtain treatment that the person is an eligible patient of the agency or entity and must, at a minimum, maintain a copy of this proof as part of the records of the contractor or subcontractor required under sub-subparagraph d.

f. In addition to the departmental inspection authority set forth in s. 499.051, the establishment of the contract provider and subcontractor and all records pertaining to prescription drugs subject to this subparagraph shall be subject to inspection by the agency or entity. All records relating to

prescription drugs of a manufacturer under this subparagraph shall be subject to audit by the manufacturer of those drugs, without identifying individual patient information.

(b) Any of the following activities, which is not a violation of s. 499.005(21) if such activity is conducted in accordance with rules established by the department:

1. The distribution ~~sale, purchase, or trade~~ of a prescription drug among federal, state, or local government health care entities that are under common control and are authorized to purchase such prescription drug.

2. The distribution ~~sale, purchase, or trade~~ of a prescription drug or ~~an~~ offer to distribute ~~sell, purchase, or trade~~ a prescription drug for emergency medical reasons, which may include~~. For purposes of this subparagraph, The term "emergency medical reasons" includes~~ transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage. For purposes of this subparagraph, a drug shortage not caused by a public health emergency does not constitute an emergency medical reason.

3. The distribution ~~transfer~~ of a prescription drug acquired by a medical director on behalf of a licensed emergency medical services provider to that emergency medical services provider and its transport vehicles for use in accordance with the provider's license under chapter 401.

~~4. The revocation of a sale or the return of a prescription drug to the person's prescription drug wholesale supplier.~~

4.~~5.~~ The donation of a prescription drug by a health care entity to a charitable organization that has been granted an exemption under s. 501(c)(3) of the Internal Revenue Code of

1986, as amended, and that is authorized to possess prescription drugs.

5.~~6.~~ The distribution ~~transfer~~ of a prescription drug by a person authorized to purchase or receive prescription drugs to a person licensed or permitted to handle reverse distributions or destruction under the laws of the jurisdiction in which the person handling the reverse distribution or destruction receives the drug.

6.~~7.~~ The distribution ~~transfer~~ of a prescription drug by a hospital or other health care entity to a person licensed under this part to repackage prescription drugs for the purpose of repackaging the prescription drug for use by that hospital, or other health care entity and other health care entities that are under common control, if ownership of the prescription drugs remains with the hospital or other health care entity at all times. In addition to the recordkeeping requirements of s. 499.0121(6), the hospital or health care entity that distributes ~~transfers~~ prescription drugs pursuant to this subparagraph must reconcile all drugs distributed ~~transferred~~ and returned and resolve any discrepancies in a timely manner.

(c) Intracompany distribution of any drug between members of an affiliate or within a manufacturer.

(d) The distribution of a prescription drug by the manufacturer of the prescription drug.

(e)~~(c)~~ The distribution of prescription drug samples by manufacturers' representatives or distributors' representatives conducted in accordance with s. 499.028.

(f) The distribution of a prescription drug by a third-party logistics provider permitted or licensed pursuant to and

operating in compliance with the laws of this state and federal law if such third-party logistics provider does not take ownership of the prescription drug.

(g) The distribution of a prescription drug, or an offer to distribute a prescription drug by a repackager registered as a drug establishment with the United States Food and Drug Administration that has taken ownership or possession of the prescription drug and repacks it in accordance with this part.

(h) The purchase or other acquisition by a dispenser, hospital, or other health care entity of a prescription drug for use by such dispenser, hospital, or other health care entity.

(i) The distribution of a prescription drug by a hospital or other health care entity, or by a wholesale distributor or manufacturer operating at the direction of the hospital or other health care entity, to a repackager for the purpose of repackaging the prescription drug for use by that hospital, or other health care entity and other health care entities that are under common control, if ownership of the prescription drug remains with the hospital or other health care entity at all times.

(j)~~(d)~~ The distribution ~~sale, purchase, or trade~~ of blood and blood components intended for transfusion. As used in this paragraph, the term "blood" means whole blood collected from a single donor and processed for transfusion or further manufacturing, and the term "blood components" means that part of the blood separated by physical or mechanical means.

(k)~~(e)~~ The lawful dispensing of a prescription drug in accordance with chapter 465.

(l)~~(f)~~ The distribution ~~sale, purchase, or trade~~ of a

prescription drug between pharmacies as a result of a sale, transfer, merger, or consolidation of all or part of the business of the pharmacies from or with another pharmacy, whether accomplished as a purchase and sale of stock or of business assets.

(m) The distribution of minimal quantities of prescription drugs by a licensed retail pharmacy to a licensed practitioner for office use in compliance with chapter 465 and rules adopted thereunder.

(n) The distribution of an intravenous prescription drug that, by its formulation, is intended for the replenishment of fluids and electrolytes, such as sodium, chloride, and potassium or calories, such as dextrose and amino acids.

(o) The distribution of an intravenous prescription drug used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions.

(p) The distribution of a prescription drug that is intended for irrigation or sterile water, whether intended for such purposes or for injection.

(q) The distribution of an exempt medical convenience kit pursuant to 21 U.S.C. s. 353(e)(4)(M).

(r) A common carrier that transports a prescription drug, if the common carrier does not take ownership of the prescription drug.

(s) Saleable drug returns when conducted by a dispenser.

(t) Facilitating the distribution of a prescription drug by providing solely administrative services, including processing of orders and payments.

(u) The distribution by a charitable organization described

in s. 501(c)(3) of the Internal Revenue Code of prescription drugs donated to or supplied at a reduced price to the charitable organization to:

1. A licensed health care practitioner, as defined in s. 456.001, who is authorized under the appropriate practice act to prescribe and administer prescription drugs;

2. A health care clinic establishment permitted pursuant to chapter 499; or

3. The Department of Health or the licensed medical director of a government agency health care entity, authorized to possess prescription drugs, for storage and use in the treatment of persons in need of emergency medical services, including controlling communicable diseases or providing protection from unsafe conditions that pose an imminent threat to public health,

if the distributor and the receiving entity receive no direct or indirect financial benefit other than tax benefits related to charitable contributions. Distributions under this section that involve controlled substances must comply with all state and federal regulations pertaining to the handling of controlled substances.

(v) The distribution of medical gas pursuant to part III of this chapter.

(49) ~~(54)~~ "Wholesale distributor" means a ~~any~~ person, other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager, who is engaged in wholesale distribution ~~of prescription drugs in or into this state, including, but not limited to, manufacturers;~~

~~repackagers; own-label distributors; jobbers; private-label distributors; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; exporters; retail pharmacies; and the agents thereof that conduct wholesale distributions~~.

Section 2. Subsections (21), (28), and (29) of section 499.005, Florida Statutes, are amended to read:

499.005 Prohibited acts.—It is unlawful for a person to perform or cause the performance of any of the following acts in this state:

(21) The wholesale distribution of any prescription drug that was:

(a) Purchased by a public or private hospital or other health care entity; or

(b) Donated or supplied at a reduced price to a charitable organization,

unless the wholesale distribution of the prescription drug is authorized in s. 499.01(2)(h)1.c. ~~499.01(2)(g)1.c.~~

(28) Failure to acquire or deliver a transaction history, transaction information, or transaction statement ~~pedigree paper~~ as required under this part and rules adopted under this part.

~~(29) The receipt of a prescription drug pursuant to a wholesale distribution without having previously received or simultaneously receiving a pedigree paper that was attested to as accurate and complete by the wholesale distributor as required under this part.~~

Section 3. Subsections (4) through (17) of section

499.0051, Florida Statutes, are renumbered as subsections (3) through (16), respectively, and subsections (1) and (2), present subsection (3), paragraphs (h) and (i) of present subsection (12), paragraph (d) of present subsection (13), and present subsection (15) of that section are amended, to read:

499.0051 Criminal acts.—

(1) FAILURE TO MAINTAIN OR DELIVER TRANSACTION HISTORY, TRANSACTION INFORMATION, OR TRANSACTION STATEMENT ~~PEDIGREE PAPERS~~.—

(a) A person~~, other than a manufacturer,~~ engaged in the ~~wholesale~~ distribution of prescription drugs who fails to deliver to another person a complete and accurate transaction history, transaction information, or transaction statement ~~pedigree papers~~ concerning a prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, before ~~prior to~~, or simultaneous with, the transfer of the prescription drug or contraband prescription drug to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person engaged in the ~~wholesale~~ distribution of prescription drugs who fails to acquire a complete and accurate transaction history, transaction information, or transaction statement ~~pedigree papers~~ concerning a prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, before ~~prior to~~, or simultaneous with, the receipt of the prescription drug or contraband prescription drug from another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who knowingly destroys, alters, conceals, or fails to maintain a complete and accurate transaction history, transaction information, or transaction statement ~~pedigree papers~~ concerning any prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, in his or her possession commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(2) FAILURE TO AUTHENTICATE PEDIGREE PAPERS.—Effective July 1, 2006:~~

~~(a) A person engaged in the wholesale distribution of prescription drugs who is in possession of pedigree papers concerning prescription drugs or contraband prescription drugs and who fails to authenticate the matters contained in the pedigree papers and who nevertheless attempts to further distribute prescription drugs or contraband prescription drugs commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(b) A person in possession of pedigree papers concerning prescription drugs or contraband prescription drugs who falsely swears or certifies that he or she has authenticated the matters contained in the pedigree papers commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(2) ~~(3)~~ KNOWING FORGERY OF TRANSACTION HISTORY, TRANSACTION INFORMATION, OR TRANSACTION STATEMENT ~~PEDIGREE PAPERS~~.—A person who knowingly forges, counterfeits, or falsely creates any transaction history, transaction information, or transaction statement ~~pedigree paper~~; who falsely represents any factual

matter contained on any transaction history, transaction information, or transaction statement ~~pedigree paper~~; or who knowingly omits to record material information required to be recorded in a transaction history, transaction information, or transaction statement ~~pedigree paper~~, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(11) ~~(12)~~ ADULTERATED AND MISBRANDED DRUGS; FALSE ADVERTISEMENT; FAILURE TO MAINTAIN RECORDS RELATING TO DRUGS.—Any person who violates any of the following provisions commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; but, if the violation is committed after a conviction of such person under this subsection has become final, such person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or as otherwise provided in this part:

(h) The failure to maintain records related to a drug as required by this part and rules adopted under this part, except for transaction histories, transaction information, or transaction statements ~~pedigree papers~~, invoices, or shipping documents related to prescription drugs.

(i) The possession of any drug in violation of this part, except if the violation relates to a deficiency in transaction histories, transaction information, or transaction statements ~~pedigree papers~~.

(12) ~~(13)~~ REFUSAL TO ALLOW INSPECTION; SELLING, PURCHASING, OR TRADING DRUG SAMPLES; FAILURE TO MAINTAIN RECORDS RELATING TO PRESCRIPTION DRUGS.—Any person who violates any of the following provisions commits a felony of the third degree, punishable as

provided in s. 775.082, s. 775.083, or s. 775.084, or as otherwise provided in this part:

(d) The failure to receive, maintain, or provide invoices and shipping documents~~, other than pedigree papers,~~ if applicable, related to the distribution of a prescription drug.

(15) FALSE ADVERTISEMENT.—A publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, repackager, wholesale distributor, or seller of the article to which a false advertisement relates, is not liable under subsection (11) ~~(12)~~, subsection (12) ~~(13)~~, or subsection (13) ~~(14)~~ by reason of the dissemination by him or her of such false advertisement, unless he or she has refused, on the request of the department, to furnish to the department the name and post office address of the manufacturer, repackager, wholesale distributor, seller, or advertising agency that asked him or her to disseminate such advertisement.

Section 4. Section 499.006, Florida Statutes, is amended to read:

499.006 Adulterated drug or device.—A drug or device is adulterated, if any of the following apply:

(1) ~~If~~ It consists in whole or in part of any filthy, putrid, or decomposed substance.~~:~~

(2) ~~If~~ It has been produced, prepared, packed, or held under conditions whereby it could have been contaminated with filth or rendered injurious to health.~~:~~

(3) ~~If~~ It is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to, or are not operated or

administered in conformity with, current good manufacturing practices to assure that the drug meets the requirements of this part and that the drug has the identity and strength, and meets the standard of quality and purity, which it purports or is represented to possess.~~:~~

(4) ~~If~~ It is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which could render the contents injurious to health.~~:~~

(5) ~~If~~ It is a drug and it bears or contains, for the purpose of coloring only, a color additive that is unsafe within the meaning of the federal act; or, if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, and it is unsafe within the meaning of the federal act.~~:~~

(6) ~~If~~ It purports to be, or is represented as, a drug the name of which is recognized in the official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. The determination as to strength, quality, or purity must be made in accordance with the tests or methods of assay set forth in such compendium, or, when such tests or methods of assay are absent or inadequate, in accordance with those tests or methods of assay prescribed under authority of the federal act. A drug defined in the official compendium is not adulterated under this subsection merely because it differs from the standard of strength, quality, or purity set forth for that drug in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.~~:~~

(7) ~~If~~ It is not subject to subsection (6) and its strength

differs from, or its purity or quality falls below the standard of, that which it purports or is represented to possess.~~;~~

(8) ~~If~~ It is a drug:

(a) With which any substance has been mixed or packed so as to reduce the quality or strength of the drug; or

(b) For which any substance has been substituted wholly or in part.~~;~~

(9) ~~If~~ It is a drug or device for which the expiration date has passed.~~;~~

(10) ~~If~~ It is a prescription drug for which the required transaction history, transaction information, or transaction statement ~~pedigree paper~~ is nonexistent, fraudulent, or incomplete under the requirements of this part or applicable rules, or that has been purchased, held, sold, or distributed at any time by a person not authorized under federal or state law to do so.~~; or~~

(11) ~~If~~ It is a prescription drug subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which has been returned by a veterinarian to a limited prescription drug veterinary wholesale distributor.

Section 5. Section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(1) Before ~~Prior to~~ operating, a permit is required for each person and establishment that intends to operate as:

(a) A prescription drug manufacturer;

(b) A prescription drug repackager;

(c) A nonresident prescription drug manufacturer;

(d) A nonresident prescription drug repackager;

(e) ~~(d)~~ A prescription drug wholesale distributor;

(f) ~~(e)~~ An out-of-state prescription drug wholesale distributor;

(g) ~~(f)~~ A retail pharmacy drug wholesale distributor;

(h) ~~(g)~~ A restricted prescription drug distributor;

(i) ~~(h)~~ A complimentary drug distributor;

(j) ~~(i)~~ A freight forwarder;

(k) ~~(j)~~ A veterinary prescription drug retail establishment;

(l) ~~(k)~~ A veterinary prescription drug wholesale distributor;

(m) ~~(l)~~ A limited prescription drug veterinary wholesale distributor;

(n) ~~(m)~~ An over-the-counter drug manufacturer;

(o) ~~(n)~~ A device manufacturer;

(p) ~~(o)~~ A cosmetic manufacturer;

(q) ~~(p)~~ A third party logistics provider; or

(r) ~~(q)~~ A health care clinic establishment.

(2) The following permits are established:

(a) *Prescription drug manufacturer permit.*—A prescription drug manufacturer permit is required for any person that is a manufacturer of a prescription drug and that manufactures or distributes such prescription drugs in this state.

1. A person that operates an establishment permitted as a prescription drug manufacturer may engage in ~~wholesale~~ distribution of prescription drugs for which the person is the manufacturer ~~manufactured at that establishment~~ and must comply with s. 499.0121 and all other ~~of the~~ provisions of this part~~,~~ ~~except s. 499.01212,~~ and ~~the~~ rules adopted under this part~~,~~ ~~except s. 499.01212, which apply to a wholesale distributor~~. The

department shall adopt rules for issuing a virtual prescription drug manufacturer permit to a person who engages in the manufacture of prescription drugs but does not make or take physical possession of any prescription drugs. The rules adopted by the department under this section may exempt virtual manufacturers from certain establishment, security, and storage requirements set forth in s. 499.0121.

2. A prescription drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

3. A blood establishment, as defined in s. 381.06014, operating in a manner consistent with the provisions of 21 C.F.R. parts 211 and 600-640, and manufacturing only the prescription drugs described in s. 499.003(48)(j) ~~499.003(53)(d)~~ is not required to be permitted as a prescription drug manufacturer under this paragraph or to register products under s. 499.015.

(b) *Prescription drug repackager permit.*—A prescription drug repackager permit is required for any person that repackages a prescription drug in this state.

1. A person that operates an establishment permitted as a prescription drug repackager may engage in ~~wholesale~~ distribution of prescription drugs repackaged at that establishment and must comply with all of the provisions of this part and the rules adopted under this part that apply to a prescription drug manufacturer ~~wholesale distributor~~.

2. A prescription drug repackager must comply with all appropriate state and federal good manufacturing practices.

(c) *Nonresident prescription drug manufacturer permit.*—A nonresident prescription drug manufacturer permit is required

for any person that is a manufacturer of prescription drugs, unless permitted as a third party logistics provider, located outside of this state or outside the United States and that engages in the ~~wholesale~~ distribution in this state of such prescription drugs. Each such manufacturer must be permitted by the department and comply with all of the provisions required of a prescription drug manufacturer ~~wholesale distributor~~ under this part~~, except s. 499.01212~~. The department shall adopt rules for issuing a virtual nonresident prescription drug manufacturer permit to a person who engages in the manufacture of prescription drugs but does not make or take physical possession of any prescription drugs. The rules adopted by the department under this section may exempt virtual nonresident manufacturers from certain establishment, security, and storage requirements set forth in s. 499.0121.

1. A person that distributes prescription drugs for which the person is not the manufacturer must also obtain an out-of-state prescription drug wholesale distributor permit or third party logistics provider permit pursuant to this section to engage in the ~~wholesale~~ distribution of such prescription drugs when required by this part. This subparagraph does not apply to a manufacturer that distributes prescription drugs only for the manufacturer of the prescription drugs where both manufacturers are affiliates ~~as defined in s. 499.003(30)(c)~~.

2. Any such person must comply with the licensing or permitting requirements of the jurisdiction in which the establishment is located and the federal act, and any prescription drug distributed ~~product wholesaled~~ into this state must comply with this part. If a person intends to import

prescription drugs from a foreign country into this state, the nonresident prescription drug manufacturer must provide to the department a list identifying each prescription drug it intends to import and document approval by the United States Food and Drug Administration for such importation.

(d) *Nonresident prescription drug repackager permit.*—A nonresident prescription drug repackager permit is required for any person located outside of this state, but within the United States or its territories, that repackages prescription drugs and engages in the distribution of such prescription drugs into this state.

1. A nonresident prescription drug repackager must comply with all of the provisions of this section and the rules adopted under this section that apply to a prescription drug manufacturer.

2. A nonresident prescription drug repackager must be permitted by the department and comply with all appropriate state and federal good manufacturing practices.

3. A nonresident prescription drug repackager must be registered as a drug establishment with the United States Food and Drug Administration.

(e) ~~(d)~~ *Prescription drug wholesale distributor permit.*—A prescription drug wholesale distributor permit is required for any person who is a wholesale distributor of prescription drugs and that ~~may engage in the~~ wholesale distributes such ~~distribution of~~ prescription drugs in this state. ~~A prescription drug wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $100,000, or other equivalent means of security acceptable to~~

~~the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.~~ The department may adopt rules for issuing a prescription drug wholesale distributor-broker permit to a person who engages in the wholesale distribution of prescription drugs and does not take physical possession of any prescription drugs.

(f) ~~(e)~~ *Out-of-state prescription drug wholesale distributor permit.*—An out-of-state prescription drug wholesale distributor permit is required for any person that is a wholesale distributor located outside this state, but within the United States or its territories, which engages in the wholesale distribution of prescription drugs into this state ~~and which must be permitted by the department and comply with all the provisions required of a wholesale distributor under this part~~. ~~An out-of-state prescription drug wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $100,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial~~

~~institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.~~ The out-of-state prescription drug wholesale distributor must maintain at all times a license or permit to engage in the wholesale distribution of prescription drugs in compliance with laws of the state in which it is a resident. If the state from which the wholesale distributor distributes prescription drugs does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

(g) ~~(f)~~ *Retail pharmacy drug wholesale distributor permit.*—A retail pharmacy drug wholesale distributor is a retail pharmacy engaged in wholesale distribution of prescription drugs within this state under the following conditions:

1. The pharmacy must obtain a retail pharmacy drug wholesale distributor permit pursuant to this part and ~~the~~ rules adopted under this part.

2. The wholesale distribution activity does not exceed 30 percent of the total annual purchases of prescription drugs. If the wholesale distribution activity exceeds the 30-percent

maximum, the pharmacy must obtain a prescription drug wholesale distributor permit.

3. The transfer of prescription drugs that appear in any schedule contained in chapter 893 is subject to chapter 893 and the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

4. The transfer is between a retail pharmacy and another retail pharmacy, or a Modified Class II institutional pharmacy, or a health care practitioner licensed in this state and authorized by law to dispense or prescribe prescription drugs.

5. All records of sales of prescription drugs subject to this section must be maintained separate and distinct from other records and comply with the recordkeeping requirements of this part.

(h) ~~(g)~~ *Restricted prescription drug distributor permit.*—

1. A restricted prescription drug distributor permit is required for:

a. Any person located in this state who engages in the distribution of a prescription drug, which distribution is not considered "wholesale distribution" under s. 499.003(48)(a) ~~499.003(53)(a)~~.

b. Any person located in this state who engages in the receipt or distribution of a prescription drug in this state for the purpose of processing its return or its destruction if such person is not the person initiating the return, the prescription drug wholesale supplier of the person initiating the return, or the manufacturer of the drug.

c. A blood establishment located in this state which collects blood and blood components only from volunteer donors

as defined in s. 381.06014 or pursuant to an authorized practitioner's order for medical treatment or therapy and engages in the wholesale distribution of a prescription drug not described in s. 499.003(48)(j) ~~499.003(53)(d)~~ to a health care entity. A mobile blood unit operated by a blood establishment permitted under this sub-subparagraph is not required to be separately permitted. The health care entity receiving a prescription drug distributed under this sub-subparagraph must be licensed as a closed pharmacy or provide health care services at that establishment. The blood establishment must operate in accordance with s. 381.06014 and may distribute only:

(I) Prescription drugs indicated for a bleeding or clotting disorder or anemia;

(II) Blood-collection containers approved under s. 505 of the federal act;

(III) Drugs that are blood derivatives, or a recombinant or synthetic form of a blood derivative;

(IV) Prescription drugs that are identified in rules adopted by the department and that are essential to services performed or provided by blood establishments and authorized for distribution by blood establishments under federal law; or

(V) To the extent authorized by federal law, drugs necessary to collect blood or blood components from volunteer blood donors; for blood establishment personnel to perform therapeutic procedures under the direction and supervision of a licensed physician; and to diagnose, treat, manage, and prevent any reaction of a volunteer blood donor or a patient undergoing a therapeutic procedure performed under the direction and supervision of a licensed physician,

as long as all of the health care services provided by the blood establishment are related to its activities as a registered blood establishment or the health care services consist of collecting, processing, storing, or administering human hematopoietic stem cells or progenitor cells or performing diagnostic testing of specimens if such specimens are tested together with specimens undergoing routine donor testing. The blood establishment may purchase and possess the drugs described in this sub-subparagraph without a health care clinic establishment permit.

2. Storage, handling, and recordkeeping of these distributions by a person required to be permitted as a restricted prescription drug distributor must be in accordance with the requirements for wholesale distributors under s. 499.0121~~, but not those set forth in s. 499.01212 if the distribution occurs pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b~~.

3. A person who applies for a permit as a restricted prescription drug distributor, or for the renewal of such a permit, must provide to the department the information required under s. 499.012.

4. The department may adopt rules regarding the distribution of prescription drugs by hospitals, health care entities, charitable organizations, other persons not involved in wholesale distribution, and blood establishments, which rules are necessary for the protection of the public health, safety, and welfare.

(i) ~~(h)~~ *Complimentary drug distributor permit.*—A

complimentary drug distributor permit is required for any person that engages in the distribution of a complimentary drug, subject to the requirements of s. 499.028.

(j)~~(i)~~ *Freight forwarder permit.*—A freight forwarder permit is required for any person that engages in the distribution of a prescription drug as a freight forwarder unless the person is a common carrier. The storage, handling, and recordkeeping of such distributions must comply with the requirements for wholesale distributors under s. 499.0121~~, but not those set forth in s. 499.01212~~. A freight forwarder must provide the source of the prescription drugs with a validated airway bill, bill of lading, or other appropriate documentation to evidence the exportation of the product.

(k)~~(j)~~ *Veterinary prescription drug retail establishment permit.*—A veterinary prescription drug retail establishment permit is required for any person that sells veterinary prescription drugs to the public but does not include a pharmacy licensed under chapter 465.

1. The sale to the public must be based on a valid written order from a veterinarian licensed in this state who has a valid client-veterinarian relationship with the purchaser's animal.

2. Veterinary prescription drugs may not be sold in excess of the amount clearly indicated on the order or beyond the date indicated on the order.

3. An order may not be valid for more than 1 year.

4. A veterinary prescription drug retail establishment may not purchase, sell, trade, or possess human prescription drugs or any controlled substance as defined in chapter 893.

5. A veterinary prescription drug retail establishment must

sell a veterinary prescription drug in the original, sealed manufacturer's container with all labeling intact and legible. The department may adopt by rule additional labeling requirements for the sale of a veterinary prescription drug.

6. A veterinary prescription drug retail establishment must comply with all of the wholesale distribution requirements of s. 499.0121.

7. Prescription drugs sold by a veterinary prescription drug retail establishment pursuant to a practitioner's order may not be returned into the retail establishment's inventory.

(l)~~(k)~~ *Veterinary prescription drug wholesale distributor permit.*—A veterinary prescription drug wholesale distributor permit is required for any person that engages in the distribution of veterinary prescription drugs in or into this state. A veterinary prescription drug wholesale distributor that also distributes prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which it did not manufacture must obtain a permit as a prescription drug wholesale distributor, an out-of-state prescription drug wholesale distributor, or a limited prescription drug veterinary wholesale distributor in lieu of the veterinary prescription drug wholesale distributor permit. A veterinary prescription drug wholesale distributor must comply with the requirements for wholesale distributors under s. 499.0121~~, but not those set forth in s. 499.01212~~.

(m)~~(l)~~ *Limited prescription drug veterinary wholesale distributor permit.*—Unless engaging in the activities of and permitted as a prescription drug manufacturer, nonresident prescription drug manufacturer, prescription drug wholesale

distributor, or out-of-state prescription drug wholesale distributor, a limited prescription drug veterinary wholesale distributor permit is required for any person that engages in the distribution in or into this state of veterinary prescription drugs and prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act under the following conditions:

1. The person is engaged in the business of wholesaling prescription and veterinary prescription drugs to persons:

a. Licensed as veterinarians practicing on a full-time basis;

b. Regularly and lawfully engaged in instruction in veterinary medicine;

c. Regularly and lawfully engaged in law enforcement activities;

d. For use in research not involving clinical use; or

e. For use in chemical analysis or physical testing or for purposes of instruction in law enforcement activities, research, or testing.

2. No more than 30 percent of total annual prescription drug sales may be prescription drugs approved for human use which are subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act.

3. The person does not distribute in any jurisdiction prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act to any person who is authorized to sell, distribute, purchase, trade, or use these drugs on or for humans.

4. A limited prescription drug veterinary wholesale

distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $20,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.

5. A limited prescription drug veterinary wholesale distributor must maintain at all times a license or permit to engage in the wholesale distribution of prescription drugs in compliance with laws of the state in which it is a resident.

6. A limited prescription drug veterinary wholesale distributor must comply with the requirements for wholesale distributors under s. ~~ss.~~ 499.0121 ~~and 499.01212, except that a limited prescription drug veterinary wholesale distributor is not required to provide a pedigree paper as required by s. 499.01212 upon the wholesale distribution of a prescription drug to a veterinarian~~.

7. A limited prescription drug veterinary wholesale distributor may not return to inventory for subsequent wholesale distribution any prescription drug subject to, defined by, or

described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which has been returned by a veterinarian.

8. A limited prescription drug veterinary wholesale distributor permit is not required for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is duly licensed to engage in the wholesale distribution of prescription drugs in its state of residence to a licensed limited prescription drug veterinary wholesale distributor in this state if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of s. ~~ss.~~ 499.0121(6) ~~and 499.01212~~ must be followed for this transaction.

(n) ~~(m)~~ *Over-the-counter drug manufacturer permit.*—An over-the-counter drug manufacturer permit is required for any person that engages in the manufacture or repackaging of an over-the-counter drug.

1. An over-the-counter drug manufacturer may not possess or purchase prescription drugs.

2. A pharmacy is exempt from obtaining an over-the-counter drug manufacturer permit if it is operating in compliance with pharmacy practice standards as defined in chapter 465 and ~~the~~ rules adopted under that chapter.

3. An over-the-counter drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

(o) ~~(n)~~ *Device manufacturer permit.*—

1. A device manufacturer permit is required for any person that engages in the manufacture, repackaging, or assembly of medical devices for human use in this state, except that a permit is not required if:

a. The person is engaged only in manufacturing, repackaging, or assembling a medical device pursuant to a practitioner's order for a specific patient; or

b. The person does not manufacture, repackage, or assemble any medical devices or components for such devices, except those devices or components which are exempt from registration pursuant to s. 499.015(8).

2. A manufacturer or repackager of medical devices in this state must comply with all appropriate state and federal good manufacturing practices and quality system rules.

3. The department shall adopt rules related to storage, handling, and recordkeeping requirements for manufacturers of medical devices for human use.

(p) ~~(o)~~ *Cosmetic manufacturer permit.*—A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in this state. A person that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a permit under this paragraph.

(q) ~~(p)~~ *Third party logistics provider permit.*—A third party logistics provider permit is required for any person that contracts with a prescription drug wholesale distributor or prescription drug manufacturer to provide warehousing, distribution, or other logistics services on behalf of a manufacturer, ~~or~~ wholesale distributor, or dispenser, but who does not take title to the prescription drug or have responsibility to direct the sale or disposition of the prescription drug. A third party logistics provider located outside of this state, must be licensed in the state or

territory from which the prescription drug is distributed by the third party logistics provider. If the state or territory from which the third party logistics provider originates does not require a license to operate as a third party logistics provider, the third party logistic provider must be licensed as a third party logistics provider as required by the federal act. Each third party logistics provider permittee shall comply with s. ~~the requirements for wholesale distributors under ss.~~ 499.0121 ~~and 499.01212, with the exception of those wholesale distributions described in s. 499.01212(3)(a),~~ and other rules that the department requires.

(r) ~~(q)~~ *Health care clinic establishment permit.* ~~Effective January 1, 2009,~~ A health care clinic establishment permit is required for the purchase of a prescription drug by a place of business at one general physical location that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number. For the purpose of this paragraph, the term "qualifying practitioner" means a licensed health care practitioner defined in s. 456.001, or a veterinarian licensed under chapter 474, who is authorized under the appropriate practice act to prescribe and administer a prescription drug.

1. An establishment must provide, as part of the application required under s. 499.012, designation of a qualifying practitioner who will be responsible for complying with all legal and regulatory requirements related to the purchase, recordkeeping, storage, and handling of the prescription drugs. In addition, the designated qualifying practitioner shall be the practitioner whose name, establishment

address, and license number is used on all distribution documents for prescription drugs purchased or returned by the health care clinic establishment. Upon initial appointment of a qualifying practitioner, the qualifying practitioner and the health care clinic establishment shall notify the department on a form furnished by the department within 10 days after such employment. In addition, the qualifying practitioner and health care clinic establishment shall notify the department within 10 days after any subsequent change.

2. The health care clinic establishment must employ a qualifying practitioner at each establishment.

3. In addition to the remedies and penalties provided in this part, a violation of this chapter by the health care clinic establishment or qualifying practitioner constitutes grounds for discipline of the qualifying practitioner by the appropriate regulatory board.

4. The purchase of prescription drugs by the health care clinic establishment is prohibited during any period of time when the establishment does not comply with this paragraph.

5. A health care clinic establishment permit is not a pharmacy permit or otherwise subject to chapter 465. A health care clinic establishment that meets the criteria of a modified Class II institutional pharmacy under s. 465.019 is not eligible to be permitted under this paragraph.

6. This paragraph does not apply to the purchase of a prescription drug by a licensed practitioner under his or her license.

(3) A nonresident prescription drug manufacturer permit is not required for a manufacturer to distribute a prescription

drug active pharmaceutical ingredient that it manufactures to a prescription drug manufacturer permitted in this state ~~in limited quantities~~ intended for research and development and not for resale or human use other than lawful clinical trials and biostudies authorized and regulated by federal law. A manufacturer claiming to be exempt from the permit requirements of this subsection and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall comply with the recordkeeping requirements of s. 499.0121(6)~~, but not the requirements of s. 499.01212~~. The prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall maintain on file a record of the FDA registration number; if available, the out-of-state license, permit, or registration number; and, if available, a copy of the most current FDA inspection report, for all manufacturers from whom they purchase active pharmaceutical ingredients under this section. ~~The department shall define the term "limited quantities" by rule, and may include the allowable number of transactions within a given period of time and the amount of prescription drugs distributed into the state for purposes of this exemption.~~ The failure to comply with the requirements of this subsection, or rules adopted by the department to administer this subsection, for the purchase of prescription drug active pharmaceutical ingredients is a violation of s. 499.005(14), and a knowing failure is a violation of s. 499.0051(3) ~~499.0051(4)~~.

(a) The immediate package or container of a prescription drug active pharmaceutical ingredient distributed into the state that is intended for research and development under this

subsection shall bear a label prominently displaying the statement: "Caution: Research and Development Only—Not for Manufacturing, Compounding, or Resale."

(b) A prescription drug manufacturer that obtains a prescription drug active pharmaceutical ingredient under this subsection for use in clinical trials and or biostudies authorized and regulated by federal law must create and maintain records detailing the specific clinical trials or biostudies for which the prescription drug active pharmaceutical ingredient was obtained.

(4)(a) A permit issued under this part is not required to distribute a prescription drug active pharmaceutical ingredient from an establishment located in the United States to an establishment located in this state permitted as a prescription drug manufacturer under this part for use by the recipient in preparing, deriving, processing, producing, or fabricating a prescription drug finished dosage form at the establishment in this state where the product is received under an approved and otherwise valid New Drug Approval Application, Abbreviated New Drug Application, New Animal Drug Application, or Therapeutic Biologic Application, provided that the application, active pharmaceutical ingredient, or finished dosage form has not been withdrawn or removed from the market in this country for public health reasons.

1. Any distributor claiming exemption from permitting requirements pursuant to this paragraph shall maintain a license, permit, or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed. If the state from which

the prescription drugs are distributed does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

2. Any distributor claiming exemption from permitting requirements pursuant to this paragraph and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall comply with the recordkeeping requirements of s. 499.0121(6)~~, but not the requirements of s. 499.01212~~.

(b) A permit issued under this part is not required to distribute ~~limited quantities of~~ a prescription drug that has not been repackaged from an establishment located in the United States to an establishment located in this state permitted as a prescription drug manufacturer under this part for research and development or to a holder of a letter of exemption issued by the department under s. 499.03(4) for research, teaching, or testing. ~~The department shall define "limited quantities" by rule and may include the allowable number of transactions within a given period of time and the amounts of prescription drugs distributed into the state for purposes of this exemption.~~

1. Any distributor claiming exemption from permitting requirements pursuant to this paragraph shall maintain a license, permit, or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed. If the state from which the prescription drugs are distributed does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale

distributor as required by the federal act.

2. All purchasers and recipients of any prescription drugs distributed pursuant to this paragraph shall ensure that the products are not resold or used, directly or indirectly, on humans except in lawful clinical trials and biostudies authorized and regulated by federal law.

3. Any distributor claiming exemption from permitting requirements pursuant to this paragraph, and the purchaser and recipient of the prescription drug, shall comply with the recordkeeping requirements of s. 499.0121(6)~~, but not the requirements of s. 499.01212~~.

4. The immediate package or container of any active pharmaceutical ingredient distributed into the state that is intended for teaching, testing, research, and development shall bear a label prominently displaying the statement: "Caution: Research, Teaching, or Testing Only - Not for Manufacturing, Compounding, or Resale."

(c) An out-of-state prescription drug wholesale distributor permit is not required for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is duly licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in this state, if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of s. ~~ss.~~ 499.0121(6) ~~and 499.01212~~ must be followed for such transactions.

(d) Persons receiving prescription drugs from a source claimed to be exempt from permitting requirements under this

subsection shall maintain on file:

1. A record of the FDA establishment registration number, if any;

2. The resident state or federal license, registration, or permit that authorizes the source to distribute prescription drugs ~~drug wholesale distribution license, permit, or registration number~~; and

3. A copy of the most recent resident state or FDA inspection report, for all distributors and establishments from whom they purchase or receive prescription drugs under this subsection.

(e) All persons claiming exemption from permitting requirements pursuant to this subsection who engage in the distribution of prescription drugs within or into the state are subject to this part, including ss. 499.005 and 499.0051, and shall make available, within 48 hours, to the department on request all records related to any prescription drugs distributed under this subsection, including those records described in s. 499.051(4), regardless of the location where the records are stored.

(f) A person purchasing and receiving a prescription drug from a person claimed to be exempt from licensing requirements pursuant to this subsection shall report to the department in writing within 14 days after receiving any product that is misbranded or adulterated or that fails to meet minimum standards set forth in the official compendium or state or federal good manufacturing practices for identity, purity, potency, or sterility, regardless of whether the product is thereafter rehabilitated, quarantined, returned, or destroyed.

(g) The department may adopt rules to administer this subsection which are necessary for the protection of the public health, safety, and welfare. Failure to comply with the requirements of this subsection, or rules adopted by the department to administer this subsection, is a violation of s. 499.005(14), and a knowing failure is a violation of s. 499.0051(3) ~~499.0051(4)~~.

(h) This subsection does not relieve any person from any requirement prescribed by law with respect to controlled substances as defined in the applicable federal and state laws.

(5) A prescription drug repackager permit issued under this part is not required for a restricted prescription drug distributor permitholder that is a health care entity to repackage prescription drugs in this state for its own use or for distribution to hospitals or other health care entities in the state for their own use, pursuant to s. 499.003(48)(a)3. ~~499.003(53)(a)3.~~, if:

(a) The prescription drug distributor notifies the department, in writing, of its intention to engage in repackaging under this exemption, 30 days before engaging in the repackaging of prescription drugs at the permitted establishment;

(b) The prescription drug distributor is under common control with the hospitals or other health care entities to which the prescription drug distributor is distributing prescription drugs. As used in this paragraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(c) The prescription drug distributor repackages the prescription drugs in accordance with current state and federal good manufacturing practices; and

(d) The prescription drug distributor labels the prescription drug it repackages in accordance with state and federal laws and rules.

The prescription drug distributor is exempt from the product registration requirements of s. 499.015 with regard to the prescription drugs that it repackages and distributes under this subsection. A prescription drug distributor that repackages and distributes prescription drugs under this subsection to a not-for-profit rural hospital, as defined in s. 395.602, is not required to comply with paragraph (c) or paragraph (d), but must provide to each health care entity for which it repackages, for each prescription drug that is repackaged and distributed, the information required by department rule for labeling prescription drugs. The prescription drug distributor shall also provide the additional current packaging and label information for the prescription drug by hard copy or by electronic means.

Section 6. Section 499.012, Florida Statutes, is amended to read:

499.012 Permit application requirements.—

(1)(a) A permit issued pursuant to this part may be issued only to a natural person who is at least 18 years of age or to an applicant that is not a natural person if each person who, directly or indirectly, manages, controls, or oversees the operation of that applicant is at least 18 years of age.

(b) An establishment that is a place of residence may not

receive a permit and may not operate under this part.

(c) A person that applies for or renews a permit to manufacture or distribute prescription drugs may not use a name identical to the name used by any other establishment or licensed person authorized to purchase prescription drugs in this state, except that a restricted drug distributor permit issued to a health care entity will be issued in the name in which the institutional pharmacy permit is issued and a retail pharmacy drug wholesale distributor will be issued a permit in the name of its retail pharmacy permit.

(d) A permit for a prescription drug manufacturer, prescription drug repackager, prescription drug wholesale distributor, limited prescription drug veterinary wholesale distributor, or retail pharmacy drug wholesale distributor may not be issued to the address of a health care entity or to a pharmacy licensed under chapter 465, except as provided in this paragraph. The department may issue a prescription drug manufacturer permit to an applicant at the same address as a licensed nuclear pharmacy, which is a health care entity, even if the nuclear pharmacy holds a special sterile compounding permit under chapter 465, for the purpose of manufacturing prescription drugs used in positron emission tomography or other radiopharmaceuticals, as listed in a rule adopted by the department pursuant to this paragraph. The purpose of this exemption is to assure availability of state-of-the-art pharmaceuticals that would pose a significant danger to the public health if manufactured at a separate establishment address from the nuclear pharmacy from which the prescription drugs are dispensed. The department may also issue a retail

pharmacy drug wholesale distributor permit to the address of a community pharmacy licensed under chapter 465, even if the community pharmacy holds a special sterile compounding permit under chapter 465, as long as the community pharmacy ~~which~~ does not meet the definition of a closed pharmacy in s. 499.003.

(e) A county or municipality may not issue an occupational license for ~~any licensing period beginning on or after October 1, 2003, for~~ any establishment that requires a permit pursuant to this part, unless the establishment exhibits a current permit issued by the department for the establishment. Upon presentation of the requisite permit issued by the department, an occupational license may be issued by the municipality or county in which application is made. The department shall furnish to local agencies responsible for issuing occupational licenses a current list of all establishments licensed pursuant to this part.

(2) Notwithstanding subsection (6), a permitted person in good standing may change the type of permit issued to that person by completing a new application for the requested permit, paying the amount of the difference in the permit fees if the fee for the new permit is more than the fee for the original permit, and meeting the applicable permitting conditions for the new permit type. The new permit expires on the expiration date of the original permit being changed; however, a new permit for a prescription drug wholesale distributor, an out-of-state prescription drug wholesale distributor, or a retail pharmacy drug wholesale distributor shall expire on the expiration date of the original permit or 1 year after the date of issuance of the new permit, whichever is earlier. A refund may not be issued

if the fee for the new permit is less than the fee that was paid for the original permit.

(3)(a) A written application for a permit or to renew a permit must be filed with the department on forms furnished by the department. The department shall establish, by rule, the form and content of the application to obtain or renew a permit. The applicant must submit to the department with the application a statement that swears or affirms that the information is true and correct.

(b) Upon a determination that 2 years have elapsed since the department notified an applicant for permit, certification, or product registration of a deficiency in the application and that the applicant has failed to cure the deficiency, the application shall expire. The determination regarding the 2-year lapse of time shall be based on documentation that the department notified the applicant of the deficiency in accordance with s. 120.60.

(c) Information submitted by an applicant on an application required pursuant to this subsection which is a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information pursuant to s. 499.051(7).

(4)(a) Except for a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor, an application for a permit must include:

1. The name, full business address, and telephone number of the applicant;

2. All trade or business names used by the applicant;

3. The address, telephone numbers, and the names of contact persons for each facility used by the applicant for the storage,

handling, and distribution of prescription drugs;

4. The type of ownership or operation, such as a partnership, corporation, or sole proprietorship; and

5. The names of the owner and the operator of the establishment, including:

a. If an individual, the name of the individual;

b. If a partnership, the name of each partner and the name of the partnership;

c. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;

d. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity;

e. If a limited liability company, the name of each member, the name of each manager, the name of the limited liability company, and the name of the state in which the limited liability company was organized; and

f. Any other relevant information that the department requires.

(b) Upon approval of the application by the department and payment of the required fee, the department shall issue a permit to the applicant, if the applicant meets the requirements of this part and rules adopted under this part.

(c) Any change in information required under paragraph (a) must be submitted to the department before the change occurs.

(d) The department shall consider, at a minimum, the following factors in reviewing the qualifications of persons to be permitted under this part:

1. The applicant's having been found guilty, regardless of

adjudication, in a court of this state or other jurisdiction, of a violation of a law that directly relates to a drug, device, or cosmetic. A plea of nolo contendere constitutes a finding of guilt for purposes of this subparagraph.

2. The applicant's having been disciplined by a regulatory agency in any state for any offense that would constitute a violation of this part.

3. Any felony conviction of the applicant under a federal, state, or local law;

4. The applicant's past experience in manufacturing or distributing drugs, devices, or cosmetics;

5. The furnishing by the applicant of false or fraudulent material in any application made in connection with manufacturing or distributing drugs, devices, or cosmetics;

6. Suspension or revocation by a federal, state, or local government of any permit currently or previously held by the applicant for the manufacture or distribution of any drugs, devices, or cosmetics;

7. Compliance with permitting requirements under any previously granted permits;

8. Compliance with requirements to maintain or make available to the state permitting authority or to federal, state, or local law enforcement officials those records required under this section; and

9. Any other factors or qualifications the department considers relevant to and consistent with the public health and safety.

(5) ~~Except for a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale~~

~~distributor:~~

(a) The department shall adopt rules for the biennial renewal of permits; however, the department may issue up to a 4-year permit to selected permittees notwithstanding any other provision of law. Fees for such renewal may not exceed the fee caps set forth in s. 499.041 on an annualized basis as authorized by law.

(b) The department shall renew a permit upon receipt of the renewal application and renewal fee if the applicant meets the requirements established under this part and ~~the~~ rules adopted under this part.

(c) At least 90 days before the expiration date of a permit, the department shall forward a permit renewal notification to the permittee at the mailing address of the permitted establishment on file with the department. The permit renewal notification must state conspicuously the date on which the permit for the establishment will expire and that the establishment may not operate unless the permit for the establishment is renewed timely. ~~A permit, unless sooner suspended or revoked, automatically expires 2 years after the last day of the anniversary month in which the permit was originally issued.~~

(d) A permit issued under this part may be renewed by making application for renewal on forms furnished by the department and paying the appropriate fees.

1. If a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor renewal application and fee are submitted and postmarked later than 45 days before the expiration date of the permit, the permit may be

renewed only upon payment of a late renewal fee of $100, plus the required renewal fee.

2. If any other ~~a~~ renewal application and fee are submitted and postmarked after the expiration date of the permit, the permit may be renewed only upon payment of a late renewal delinquent fee of $100, plus the required renewal fee, not later than 60 days after the expiration date.

3. A permittee who submits a renewal application in accordance with this paragraph may continue to operate under its permit, unless the permit is suspended or revoked, until final disposition of the renewal application.

4.~~(d)~~ Failure to renew a permit in accordance with this section precludes any future renewal of that permit. If a permit issued pursuant to this part has expired and cannot be renewed, before an establishment may engage in activities that require a permit under this part, the establishment must submit an application for a new permit, pay the applicable application fee, the initial permit fee, and all applicable penalties, and be issued a new permit by the department.

(6) A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

(a) A person permitted under this part must notify the department before making a change of address. The department shall set a change of location fee not to exceed $100.

(b)1. An application for a new permit is required when a

majority of the ownership or controlling interest of a permitted establishment is transferred or assigned or when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the establishment will rest with the lessee. The application for the new permit must be made before the date of the sale, transfer, assignment, or lease.

2. A permittee that is authorized to distribute prescription drugs may transfer such drugs to the new owner or lessee under subparagraph 1. only after the new owner or lessee has been approved for a permit to distribute prescription drugs.

(c) If an establishment permitted under this part closes, the owner must notify the department in writing before the effective date of closure and must:

1. Return the permit to the department;

2. If the permittee is authorized to distribute prescription drugs, indicate the disposition of such drugs, including the name, address, and inventory, and provide the name and address of a person to contact regarding access to records that are required to be maintained under this part. Transfer of ownership of prescription drugs may be made only to persons authorized to possess prescription drugs under this part.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

(7) A permit must be posted in a conspicuous place on the licensed premises.

(8) An application for a permit or to renew a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor submitted to the

department must include:

(a) The name, full business address, and telephone number of the applicant.

(b) All trade or business names used by the applicant.

(c) The address, telephone numbers, and the names of contact persons for each facility used by the applicant for the storage, handling, and distribution of prescription drugs.

(d) The type of ownership or operation, such as a partnership, corporation, or sole proprietorship.

(e) The names of the owner and the operator of the establishment, including:

1. If an individual, the name of the individual.

2. If a partnership, the name of each partner and the name of the partnership.

3. If a corporation:

a. The name, address, and title of each corporate officer and director.

b. The name and address of the corporation, resident agent of the corporation, the resident agent's address, and the corporation's state of incorporation.

c. The name and address of each shareholder of the corporation that owns 5 percent or more of the outstanding stock of the corporation.

4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.

5. If a limited liability company:

a. The name and address of each member.

b. The name and address of each manager.

c. The name and address of the limited liability company,

the resident agent of the limited liability company, and the name of the state in which the limited liability company was organized.

(f) If applicable, the name and address of each affiliate of ~~member of the affiliated group of which~~ the applicant ~~is a member~~.

(g)~~1.~~ The applicant's gross annual receipts attributable to prescription drug wholesale distribution activities for the previous tax year. ~~For an application for a new permit, the estimated annual dollar volume of prescription drug sales of the applicant, the estimated annual percentage of the applicant's total company sales that are prescription drugs, the applicant's estimated annual total dollar volume of purchases of prescription drugs, and the applicant's estimated annual total dollar volume of prescription drug purchases directly from manufacturers.~~

~~2. For an application to renew a permit, the total dollar volume of prescription drug sales in the previous year, the total dollar volume of prescription drug sales made in the previous 6 months, the percentage of total company sales that were prescription drugs in the previous year, the total dollar volume of purchases of prescription drugs in the previous year, and the total dollar volume of prescription drug purchases directly from manufacturers in the previous year.~~

~~Such portions of the information required pursuant to this paragraph which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051.~~

(h) The tax year of the applicant.

(i) A copy of the deed for the property on which applicant's establishment is located, if the establishment is owned by the applicant, or a copy of the applicant's lease for the property on which applicant's establishment is located that has an original term of not less than 1 calendar year, if the establishment is not owned by the applicant.

(j) A list of all licenses and permits issued to the applicant by any other state which authorize the applicant to purchase or possess prescription drugs.

(k) The name of the manager of the establishment that is applying for the permit or to renew the permit, the next four highest ranking employees responsible for prescription drug wholesale operations for the establishment, and the name of all affiliated parties for the establishment, together with the personal information statement and fingerprints required pursuant to subsection (9) for each of such persons.

(l) The name of each of the applicant's designated representatives as required by subsection (15) ~~(16)~~, together with the personal information statement and fingerprints required pursuant to subsection (9) for each such person.

(m) Evidence of a surety bond in this state or any other state in the United States in the amount of $100,000. If the annual gross receipts of the applicant's previous tax year is $10 million or less, evidence of a surety bond in the amount of $25,000. The specific language of the surety bond must include the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund. In lieu of the surety bond, the applicant may provide other equivalent security such as an

irrevocable letter of credit or a deposit in a trust account or financial institution payable to the Professional Regulation Trust Fund. The purpose of the bond or other security is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later. ~~For an applicant that is a secondary wholesale distributor, each of the following:~~

~~1. A personal background information statement containing the background information and fingerprints required pursuant to subsection (9) for each person named in the applicant's response to paragraphs (k) and (l) and for each affiliated party of the applicant.~~

~~2. If any of the five largest shareholders of the corporation seeking the permit is a corporation, the name, address, and title of each corporate officer and director of each such corporation; the name and address of such corporation; the name of such corporation's resident agent, such corporation's resident agent's address, and such corporation's state of its incorporation; and the name and address of each shareholder of such corporation that owns 5 percent or more of the stock of such corporation.~~

~~3. The name and address of all financial institutions in~~

~~which the applicant has an account which is used to pay for the operation of the establishment or to pay for drugs purchased for the establishment, together with the names of all persons that are authorized signatories on such accounts. The portions of the information required pursuant to this subparagraph which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051.~~

~~4. The sources of all funds and the amounts of such funds used to purchase or finance purchases of prescription drugs or to finance the premises on which the establishment is to be located.~~

~~5. If any of the funds identified in subparagraph 4. were borrowed, copies of all promissory notes or loans used to obtain such funds.~~

(n) For establishments used in wholesale distribution, proof of an inspection conducted by the department, the United States Food and Drug Administration, or another governmental entity charged with the regulation of good manufacturing practices related to wholesale distribution of prescription drugs, within timeframes set forth by the department in departmental rules, which demonstrates substantial compliance with current good manufacturing practices applicable to wholesale distribution of prescription drugs. The department may recognize another state's inspection of a wholesale distributor located in that state if such state's laws are deemed to be substantially equivalent to the law of this state by the department. The department may accept an inspection by a third-party accreditation or inspection service which meets the

criteria set forth in department rule.

(o) ~~(n)~~ Any other relevant information that the department requires~~, including, but not limited to, any information related to whether the applicant satisfies the definition of a primary wholesale distributor or a secondary wholesale distributor~~.

(p) ~~(o)~~ Documentation of the credentialing policies and procedures required by s. 499.0121(15).

(9)(a) Each person required by subsection (8) or subsection (15) to provide a personal information statement and fingerprints shall provide the following information to the department on forms prescribed by the department:

1. The person's places of residence for the past 7 years.

2. The person's date and place of birth.

3. The person's occupations, positions of employment, and offices held during the past 7 years.

4. The principal business and address of any business, corporation, or other organization in which each such office of the person was held or in which each such occupation or position of employment was carried on.

5. Whether the person has been, during the past 7 years, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

6. Whether, during the past 7 years, the person has been enjoined, temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control, or distribution of prescription drugs, together with details concerning any such event.

7. A description of any involvement by the person with any

business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past 4 ~~7~~ years, which manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which such businesses were named as a party.

8. A description of any felony criminal offense of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony in this state must be reported. If the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the department a copy of the final written order of disposition.

9. A photograph of the person taken in the previous 180 ~~30~~ days.

10. A set of fingerprints for the person on a form and under procedures specified by the department, together with payment of an amount equal to the costs incurred by the department for the criminal record check of the person.

11. The name, address, occupation, and date and place of birth for each member of the person's immediate family who is 18 years of age or older. As used in this subparagraph, the term "member of the person's immediate family" includes the person's spouse, children, parents, siblings, the spouses of the person's children, and the spouses of the person's siblings.

12. Any other relevant information that the department requires.

(b) The information required pursuant to paragraph (a) shall be provided under oath.

(c) The department shall submit the fingerprints provided by a person for initial licensure to the Department of Law Enforcement for a statewide criminal record check and for forwarding to the Federal Bureau of Investigation for a national criminal record check of the person. The department shall submit the fingerprints provided by a person as a part of a renewal application to the Department of Law Enforcement for a statewide criminal record check, and for forwarding to the Federal Bureau of Investigation for a national criminal record check, for the initial renewal of a permit after January 1, 2004; for any subsequent renewal of a permit, the department shall submit the required information for a statewide and national criminal record check of the person. Any person who as a part of an initial permit application or initial permit renewal after January 1, 2004, submits to the department a set of fingerprints required for the criminal record check required in this paragraph are ~~shall~~ not ~~be~~ required to provide a subsequent set of fingerprints for a criminal record check to the department, if the person has undergone a criminal record check as a condition of the issuance of an initial permit or the initial renewal of a permit of an applicant after January 1, 2004. The department is authorized to contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for registration, certification, or the licensure process or where criminal history record checks are required.

(d) For purposes of applying for renewal of a permit under

subsection (8) or certification under subsection (16), a person may submit the following in lieu of satisfying the requirements of paragraphs (a), (b), and (c):

1. A photograph of the individual taken within 180 days; and

2. A copy of the personal information statement form most recently submitted to the department and a certification under oath, on a form specified by the department, that the individual has reviewed the previously submitted personal information statement form and that the information contained therein remains unchanged.

(10) The department may deny an application for a permit or refuse to renew a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor if:

(a) The applicant has not met the requirements for the permit.

(b) The management, officers, or directors of the applicant or any affiliated party are found by the department to be incompetent or untrustworthy.

(c) The applicant is so lacking in experience in managing a wholesale distributor as to make the issuance of the proposed permit hazardous to the public health.

(d) The applicant is so lacking in experience in managing a wholesale distributor as to jeopardize the reasonable promise of successful operation of the wholesale distributor.

(e) The applicant is lacking in experience in the distribution of prescription drugs.

(f) The applicant’s past experience in manufacturing or

distributing prescription drugs indicates that the applicant poses a public health risk.

(g) The applicant is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been detrimental to the public health.

(h) The applicant, or any affiliated party, has been found guilty of or has pleaded guilty or nolo contendere to any felony or crime punishable by imprisonment for 1 year or more under the laws of the United States, any state, or any other country, regardless of whether adjudication of guilt was withheld.

(i) The applicant or any affiliated party has been charged with a felony in a state or federal court and the disposition of that charge is pending during the application review or renewal review period.

(j) The applicant has furnished false or fraudulent information or material in any application made in this state or any other state in connection with obtaining a permit or license to manufacture or distribute drugs, devices, or cosmetics.

(k) That a federal, state, or local government permit currently or previously held by the applicant, or any affiliated party, for the manufacture or distribution of any drugs, devices, or cosmetics has been disciplined, suspended, or revoked and has not been reinstated.

(l) The applicant does not possess the financial or physical resources to operate in compliance with the permit being sought, this chapter, and the rules adopted under this chapter.

(m) The applicant or any affiliated party receives,

directly or indirectly, financial support and assistance from a person who was an affiliated party of a permittee whose permit was subject to discipline or was suspended or revoked, other than through the ownership of stock in a publicly traded company or a mutual fund.

(n) The applicant or any affiliated party receives, directly or indirectly, financial support and assistance from a person who has been found guilty of any violation of this part or chapter 465, chapter 501, or chapter 893, any rules adopted under this part or those chapters, any federal or state drug law, or any felony where the underlying facts related to drugs, regardless of whether the person has been pardoned, had her or his civil rights restored, or had adjudication withheld, other than through the ownership of stock in a publicly traded company or a mutual fund.

(o) The applicant for renewal of a permit under s. 499.01(2)(e) or (f) ~~499.01(2)(d) or (c)~~ has not actively engaged in the wholesale distribution of prescription drugs, as demonstrated by the regular and systematic distribution of prescription drugs throughout the year as evidenced by not fewer than 12 wholesale distributions in the previous year and not fewer than three wholesale distributions in the previous 6 months.

(p) Information obtained in response to s. 499.01(2)(e) or (f) ~~499.01(2)(d) or (c)~~ demonstrates it would not be in the best interest of the public health, safety, and welfare to issue a permit.

(q) The applicant does not possess the financial standing and business experience for the successful operation of the

applicant.

(r) The applicant or any affiliated party has failed to comply with the requirements for manufacturing or distributing prescription drugs under this part, similar federal laws, similar laws in other states, or the rules adopted under such laws.

(11) Upon approval of the application by the department and payment of the required fee, the department shall issue or renew a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor permit to the applicant.

~~(12) For a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor:~~

~~(a) The department shall adopt rules for the annual renewal of permits. At least 90 days before the expiration of a permit, the department shall forward a permit renewal notification and renewal application to the prescription drug wholesale distributor or out-of-state prescription drug wholesale distributor at the mailing address of the permitted establishment on file with the department. The permit renewal notification must state conspicuously the date on which the permit for the establishment will expire and that the establishment may not operate unless the permit for the establishment is renewed timely.~~

~~(b) A permit, unless sooner suspended or revoked, automatically expires 1 year after the last day of the anniversary month in which the permit was originally issued. A permit may be renewed by making application for renewal on forms furnished by the department and paying the appropriate fees. If~~

~~a renewal application and fee are submitted and postmarked after 45 days prior to the expiration date of the permit, the permit may be renewed only upon payment of a late renewal fee of $100, plus the required renewal fee. A permittee that has submitted a renewal application in accordance with this paragraph may continue to operate under its permit, unless the permit is suspended or revoked, until final disposition of the renewal application.~~

~~(c) Failure to renew a permit in accordance with this section precludes any future renewal of that permit. If a permit issued pursuant to this section has expired and cannot be renewed, before an establishment may engage in activities that require a permit under this part, the establishment must submit an application for a new permit; pay the applicable application fee, initial permit fee, and all applicable penalties; and be issued a new permit by the department.~~

(12) ~~(13)~~ A person that engages in wholesale distribution of prescription drugs in this state must have a wholesale distributor's permit issued by the department, except as noted in this section. Each establishment must be separately permitted except as noted in this subsection.

(a) A separate establishment permit is not required when a permitted prescription drug wholesale distributor consigns a prescription drug to a pharmacy that is permitted under chapter 465 and located in this state, provided that:

1. The consignor wholesale distributor notifies the department in writing of the contract to consign prescription drugs to a pharmacy along with the identity and location of each consignee pharmacy;

2. The pharmacy maintains its permit under chapter 465;

3. The consignor wholesale distributor, which has no legal authority to dispense prescription drugs, complies with all wholesale distribution requirements of s. ~~ss.~~ 499.0121 ~~and 499.01212~~ with respect to the consigned drugs and maintains records documenting the transfer of title or other completion of the wholesale distribution of the consigned prescription drugs;

4. The distribution of the prescription drug is otherwise lawful under this chapter and other applicable law;

5. Open packages containing prescription drugs within a pharmacy are the responsibility of the pharmacy, regardless of how the drugs are titled; and

6. The pharmacy dispenses the consigned prescription drug in accordance with the limitations of its permit under chapter 465 or returns the consigned prescription drug to the consignor wholesale distributor. In addition, a person who holds title to prescription drugs may transfer the drugs to a person permitted or licensed to handle the reverse distribution or destruction of drugs. Any other distribution by and means of the consigned prescription drug by any person, not limited to the consignor wholesale distributor or consignee pharmacy, to any other person is prohibited.

(b) A wholesale distributor's permit is not required for the one-time transfer of title of a pharmacy's lawfully acquired prescription drug inventory by a pharmacy with a valid permit issued under chapter 465 to a consignor prescription drug wholesale distributor, permitted under this chapter, in accordance with a written consignment agreement between the pharmacy and that wholesale distributor if the permitted

pharmacy and the permitted prescription drug wholesale distributor comply with all of the provisions of paragraph (a) and the prescription drugs continue to be within the permitted pharmacy's inventory for dispensing in accordance with the limitations of the pharmacy permit under chapter 465. A consignor drug wholesale distributor may not use the pharmacy as a wholesale distributor through which it distributes the prescription drugs to other pharmacies. Nothing in this section is intended to prevent a wholesale distributor from obtaining this inventory in the event of nonpayment by the pharmacy.

(c) A separate establishment permit is not required when a permitted prescription drug wholesale distributor operates temporary transit storage facilities for the sole purpose of storage, for up to 16 hours, of a delivery of prescription drugs when the wholesale distributor was temporarily unable to complete the delivery to the recipient.

(d) The department shall require information from each wholesale distributor as part of the permit and renewal of such permit, as required under this section.

(13) ~~(14)~~ Personnel employed in wholesale distribution must have appropriate education and experience to enable them to perform their duties in compliance with state permitting requirements.

(14) ~~(15)~~ The name of a permittee or establishment on a prescription drug wholesale distributor permit or an out-of-state prescription drug wholesale distributor permit may not include any indicia of attainment of any educational degree, any indicia that the permittee or establishment possesses a professional license, or any name or abbreviation that the

department determines is likely to cause confusion or mistake or that the department determines is deceptive, including that of any other entity authorized to purchase prescription drugs.

(15) ~~(16)~~ (a) Each establishment that is issued an initial or renewal permit as a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor must designate in writing to the department at least one natural person to serve as the designated representative of the wholesale distributor. Such person must have an active certification as a designated representative from the department.

(b) To be certified as a designated representative, a natural person must:

1. Submit an application on a form furnished by the department and pay the appropriate fees.

2. Be at least 18 years of age.

3. Have at least 2 years of verifiable full-time:

a. Work experience in a pharmacy licensed in this state or another state, where the person's responsibilities included, but were not limited to, recordkeeping for prescription drugs;

b. Managerial experience with a prescription drug wholesale distributor licensed in this state or in another state; or

c. Managerial experience with the United States Armed Forces, where the person's responsibilities included, but were not limited to, recordkeeping, warehousing, distributing, or other logistics services pertaining to prescription drugs.

4. Receive a passing score of at least 75 percent on an examination given by the department regarding federal laws governing distribution of prescription drugs and this part and

the rules adopted by the department governing the wholesale distribution of prescription drugs. This requirement shall be effective 1 year after the results of the initial examination are mailed to the persons that took the examination. The department shall offer such examinations at least four times each calendar year.

5. Provide the department with a personal information statement and fingerprints pursuant to subsection (9).

(c) The department may deny an application for certification as a designated representative or may suspend or revoke a certification of a designated representative pursuant to s. 499.067.

(d) A designated representative:

1. Must be actively involved in and aware of the actual daily operation of the wholesale distributor.

2. Must be employed full time in a managerial position by the wholesale distributor.

3. Must be physically present at the establishment during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation, or other authorized absence.

4. May serve as a designated representative for only one wholesale distributor at any one time.

(e) A wholesale distributor must notify the department when a designated representative leaves the employ of the wholesale distributor. Such notice must be provided to the department within 10 business days after the last day of designated representative's employment with the wholesale distributor.

(f) A wholesale distributor may not operate under a

prescription drug wholesale distributor permit or an out-of-state prescription drug wholesale distributor permit for more than 10 business days after the designated representative leaves the employ of the wholesale distributor, unless the wholesale distributor employs another designated representative and notifies the department within 10 business days of the identity of the new designated representative.

Section 7. Section 499.01201, Florida Statutes, is amended to read:

499.01201 Agency for Health Care Administration review and use of statute and rule violation or compliance data.—Notwithstanding any other provision ~~provisions~~ of law ~~to the contrary~~, the Agency for Health Care Administration may not:

(1) Review or use any violation or alleged violation of s. 499.0121(6) ~~or s. 499.01212~~, or any rules adopted under that section ~~those sections~~, as a ground for denying or withholding any payment of a Medicaid reimbursement to a pharmacy licensed under chapter 465; or

(2) Review or use compliance with s. 499.0121(6) ~~or s. 499.01212~~, or any rules adopted under that section ~~those sections~~, as the subject of any audit of Medicaid-related records held by a pharmacy licensed under chapter 465.

Section 8. Paragraph (d) of subsection (4) and subsection (6) of section 499.0121, Florida Statutes, are amended to read:

499.0121 Storage and handling of prescription drugs; recordkeeping.—The department shall adopt rules to implement this section as necessary to protect the public health, safety, and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs

and for the establishment and maintenance of prescription drug distribution records.

(4) EXAMINATION OF MATERIALS AND RECORDS.—

(d) Upon receipt, a wholesale distributor must review records required under this section for the acquisition of prescription drugs for accuracy and completeness, considering the total facts and circumstances surrounding the transactions and the wholesale distributors involved. ~~This includes authenticating each transaction listed on a pedigree paper, as defined in s. 499.003(37).~~

(6) RECORDKEEPING.—The department shall adopt rules that require keeping such records of prescription drugs, including active pharmaceutical ingredients, as are necessary for the protection of the public health.

(a) ~~Wholesale~~ Distributors of prescription drugs and active pharmaceutical ingredients must establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and active pharmaceutical ingredients. These records must provide a complete audit trail from receipt to sale or other disposition, be readily retrievable for inspection, and include, at a minimum, the following information:

1. The source of the prescription drugs or active pharmaceutical ingredients, including the name and principal address of the seller or transferor, and the address of the location from which the prescription drugs were shipped;

2. The name, principal address, and state license permit or registration number of the person authorized to purchase prescription drugs or active pharmaceutical ingredients;

3. The name, strength, dosage form, and quantity of the prescription drugs received and distributed or disposed of;

4. The dates of receipt and distribution or other disposition of the prescription drugs or active pharmaceutical ingredients; and

5. Any financial documentation supporting the transaction.

(b) Inventories and records must be made available for inspection and photocopying by authorized federal, state, or local officials for a period of 2 years following disposition of the drugs or 3 years after the creation of the records, whichever period is longer.

(c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means must be readily available for authorized inspection during the retention period. Records that are kept at a central location outside of this state and that are not electronically retrievable must be made available for inspection within 2 working days after a request by an authorized official of a federal, state, or local law enforcement agency. Records that are maintained at a central location within this state must be maintained at an establishment that is permitted pursuant to this part and must be readily available.

(d) Each manufacturer or repackager of medical devices, over-the-counter drugs, or cosmetics must maintain records that include the name and principal address of the seller or transferor of the product, the address of the location from which the product was shipped, the date of the transaction, the name and quantity of the product involved, and the name and

principal address of the person who purchased the product.

~~(c) When pedigree papers are required by this part, a wholesale distributor must maintain the pedigree papers separate and distinct from other records required under this part.~~

Section 9. Subsection (4) of section 499.015, Florida Statues, is amended to read:

499.015 Registration of drugs, devices, and cosmetics; issuance of certificates of free sale.—

(4) Unless a registration is renewed, it expires 2 years after the last day of the month in which it was issued. Any product registration issued or renewed on or after July 1, 2016, shall expire on the same date as the manufacturer or repackager permit of the person seeking to register the product. If the first product registration issued to a person on or after July 1, 2016, expires less than 366 days after issuance, the fee for product registration shall be $15. If the first product registration issued to a person on or after July 1, 2016, expires more than 365 days after issuance, the fee for product registration shall be $30. The department may issue a stop-sale notice or order against a person that is subject to the requirements of this section and that fails to comply with this section within 31 days after the date the registration expires. The notice or order shall prohibit such person from selling or causing to be sold any drugs, devices, or cosmetics covered by this part until he or she complies with the requirements of this section.

Section 10. Subsection (1) of section 499.03, Florida Statutes, is amended to read:

499.03 Possession of certain drugs without prescriptions

unlawful; exemptions and exceptions.—

(1) A person may not possess, or possess with intent to sell, dispense, or deliver, any habit-forming, toxic, harmful, or new drug subject to s. 499.003(32) ~~499.003(33)~~, or prescription drug as defined in s. 499.003(40) ~~499.003(43)~~, unless the possession of the drug has been obtained by a valid prescription of a practitioner licensed by law to prescribe the drug. However, this section does not apply to the delivery of such drugs to persons included in any of the classes named in this subsection, or to the agents or employees of such persons, for use in the usual course of their businesses or practices or in the performance of their official duties, as the case may be; nor does this section apply to the possession of such drugs by those persons or their agents or employees for such use:

(a) A licensed pharmacist or any person under the licensed pharmacist's supervision while acting within the scope of the licensed pharmacist's practice;

(b) A licensed practitioner authorized by law to prescribe prescription drugs or any person under the licensed practitioner's supervision while acting within the scope of the licensed practitioner's practice;

(c) A qualified person who uses prescription drugs for lawful research, teaching, or testing, and not for resale;

(d) A licensed hospital or other institution that procures such drugs for lawful administration or dispensing by practitioners;

(e) An officer or employee of a federal, state, or local government; or

(f) A person that holds a valid permit issued by the

department pursuant to this part which authorizes that person to possess prescription drugs.

Section 11. Paragraphs (i) through (p) of subsection (1) of section 499.05, Florida Statutes, are amended to read:

499.05 Rules.—

(1) The department shall adopt rules to implement and enforce this chapter with respect to:

(i) Additional conditions that qualify as an emergency medical reason under s. 499.003(48)(b)2. ~~499.003(53)(b)2.~~ or s. 499.82.

~~(j) Procedures and forms relating to the pedigree paper requirement of s. 499.01212.~~

(j) ~~(k)~~ The protection of the public health, safety, and welfare regarding good manufacturing practices that manufacturers and repackagers must follow to ensure the safety of the products.

(k) ~~(l)~~ Information required from each retail establishment pursuant to s. 499.012(3) or s. 499.83(2)(c), including requirements for prescriptions or orders.

(l) ~~(m)~~ The recordkeeping, storage, and handling with respect to each of the distributions of prescription drugs specified in s. 499.003(48)(a)-(v) ~~499.003(53)(a)-(d)~~ or s. 499.82(14).

~~(n) Alternatives to compliance with s. 499.01212 for a prescription drug in the inventory of a permitted prescription drug wholesale distributor as of June 30, 2006, and the return of a prescription drug purchased prior to July 1, 2006. The department may specify time limits for such alternatives.~~

(m) ~~(o)~~ Wholesale distributor reporting requirements of s.

499.0121(14).

(n) ~~(p)~~ Wholesale distributor credentialing and distribution requirements of s. 499.0121(15).

Section 12. Subsection (7) of section 499.051, Florida Statutes, is amended to read:

499.051 Inspections and investigations.—

(7) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation and the enforcement action are completed. However, trade secret information contained therein as defined by s. 812.081(1)(c) shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as long as the information is retained by the department. This subsection does not prohibit the department from using such information for regulatory or enforcement proceedings under this chapter or from providing such information to any law enforcement agency or any other regulatory agency. However, the receiving agency shall keep such records confidential and exempt as provided in this subsection. ~~In addition, this subsection is not intended to prevent compliance with the provisions of s. 499.01212, and the pedigree papers required in that section shall not be deemed a trade secret.~~

Section 13. Subsection (8) is added to section 499.066, Florida Statutes, to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(8)(a) The department shall adopt rules to permit the

issuance of remedial, nondisciplinary citations. A citation shall be issued to the person alleged to have committed a violation and contain the person's name, address, and license number, if applicable, a brief factual statement, the sections of the law allegedly violated, and the monetary assessment and or other remedial measures imposed. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation pursuant to s. 499.051. If the person does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and does not constitute discipline.

(b) The department shall adopt rules designating violations for which a citation may be issued. The rules shall designate as citable those violations for which there is no substantial threat to the public health, safety, or welfare.

(c) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to the citation.

(d) A citation must be issued within 12 months after the filing of the complaint that is the basis for the citation.

(e) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person's last known address of record with the department or to the person's Florida registered agent.

(f) The department has authority to, and shall adopt rules to, designate those violations for which a person is subject to the issuance of a citation and designate the monetary

assessments and or other remedial measures that must be taken for those violations. The department has continuous authority to amend its rules adopted pursuant to this section.

Section 14. Subsection (14) of section 499.82, Florida Statutes, is amended to read:

499.82 Definitions.—As used in this part, the term:

(14) "Wholesale distribution" means the distribution of medical gas to a person other than a consumer or patient. Wholesale distribution of medical gases does not include:

(a) The sale, purchase, or trade of a medical gas; an offer to sell, purchase, or trade a medical gas; or the dispensing of a medical gas pursuant to a prescription;

(b) Activities exempt from the definition of wholesale distribution in s. 499.003; or

(c) The sale, purchase, or trade of a medical gas or an offer to sell, purchase, or trade a medical gas for emergency medical reasons~~; or~~

~~(d) Other transactions excluded from the definition of wholesale distribution under the federal act or regulations implemented under the federal act related to medical gas~~.

Section 15. Subsection (4) of section 499.89, Florida Statutes, is amended to read:

499.89 Recordkeeping.—

~~(4) A pedigree paper is not required for distributing or dispensing medical gas.~~

Section 16. Section 499.01212, Florida Statutes, is repealed.

Section 17. Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

409.9201 Medicaid fraud.—

(1) As used in this section, the term:

(a) "Prescription drug" means any drug, including, but not limited to, finished dosage forms or active ingredients that are subject to, defined in, or described in s. 503(b) of the Federal Food, Drug, and Cosmetic Act or in s. 465.003(8), s. 499.003(47) ~~499.003(52)~~, s. 499.007(13), or s. 499.82(10).

The value of individual items of the legend drugs or goods or services involved in distinct transactions committed during a single scheme or course of conduct, whether involving a single person or several persons, may be aggregated when determining the punishment for the offense.

Section 18. Paragraph (b) of subsection (1) of section 499.067, Florida Statutes, is amended to read:

499.067 Denial, suspension, or revocation of permit, certification, or registration.—

(1)

(b) The department may deny an application for a permit or certification, or suspend or revoke a permit or certification, if the department finds that:

1. The applicant is not of good moral character or that it would be a danger or not in the best interest of the public health, safety, and welfare if the applicant were issued a permit or certification.

2. The applicant has not met the requirements for the permit or certification.

3. The applicant is not eligible for a permit or certification for any of the reasons enumerated in s. 499.012.

4. The applicant, permittee, or person certified under s. 499.012(15) ~~s. 499.012(16)~~ demonstrates any of the conditions enumerated in s. 499.012.

5. The applicant, permittee, or person certified under s. 499.012(15) ~~s. 499.012(16)~~ has committed any violation of this chapter.

Section 19. Subsection (1) of section 794.075, Florida Statutes, is amended to read:

794.075 Sexual predators; erectile dysfunction drugs.—

(1) A person may not possess a prescription drug, as defined in s. 499.003(40) ~~499.003(43)~~, for the purpose of treating erectile dysfunction if the person is designated as a sexual predator under s. 775.21.

Section 20. Paragraphs (d), (f), (i), and (j) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements ~~pedigree papers~~.
~~499.0051(2)~~	~~3rd~~	~~Failure to authenticate pedigree papers.~~
499.0051(5) ~~499.0051(6)~~	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.

784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted

		burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.

817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement,

		correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.

918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2) ~~499.0051(3)~~	2nd	Knowing forgery of transaction history, transaction information, or transaction statement ~~pedigree papers~~.

499.0051(3) ~~499.0051(4)~~	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4) ~~499.0051(5)~~	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.

784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.

790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding

escaped prisoners.

944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(8) ~~499.0051(9)~~	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.

782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with

		performance of any governmental or political function.
787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.

790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age

		or older.
794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.

812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill

		or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.

893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or

		registration requirements, financial transactions totaling or exceeding $100,000.

(j) LEVEL 10

Florida Statute	Felony Degree	Description
499.0051(9) ~~499.0051(10)~~	1st	Knowing sale or purchase of contraband prescription drugs resulting in death.
782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
782.07(3)	1st	Aggravated manslaughter of a child.
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child

		abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(g)	Life	Human trafficking for commercial sexual activity of a child under the age of 18 or mentally defective or incapacitated person.
787.06(4)(a)	Life	Selling or buying of minors into human trafficking.
794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.
812.135(2)(a)	1st,PBL	Home-invasion robbery with firearm or other deadly weapon.
876.32	1st	Treason against the state.

Section 21. This act shall take effect July 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 Appropriations

BILL:	CS/CS/SB 1630
INTRODUCER:	Ethics and Elections Committee; Banking and Insurance Committee; and Senator Flores
SUBJECT:	Operations of the Citizens Property Insurance Corporation
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Carlton	Roberts	EE	**Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1630 makes the following changes regarding Citizens Property Insurance Corporation (Citizens):

Citizens Depopulation

- Requires Citizens to make changes, by January 1, 2017, to their plan of operation as it relates to take-out agreements made with private insurers.
- Requires Citizens to establish six cycles for which take-out offers can be made by private insurers to Citizens' policyholders.
- Requires private insurers to offer similar coverage comparable to Citizens and must agree that their initial premium will be within ten percent of the estimated premium submitted with the take-out offer.
- Requires private insurers must include in their take-out offers to Citizens policyholders, a comparison of coverages and rate between the insurer's policy and Citizens policy.
- Requires Citizens to compile a list of companies that have shown interest in depopulating a policy and to make available to the agent of record.
- Allows a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate allowed in the bill.

Citizens Agent Appointments

- Requires that agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.

Other Provisions

- Allows the consumer representative to the Citizens Board of Governors to be afforded the same conflict of interest exemption as other board members.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent. Such data may only be used for the development of takeout plans or rating plans. General lines agents are prohibited from using Citizens' underwriting files and claims files for the direct solicitation of policyholders.

Public Model

Allows Citizens to use a combination of the public model and private models when calculating the windstorm portion of rates.

The bill has no fiscal impact to state funds.

The bill is effective July 1, 2016.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[1] Citizens is not a private insurance company.[2] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors[3] that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

[1] Admitted market means insurance companies licensed to transact insurance in Florida.
[2] s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.
[3] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.[4] Assets may not be commingled or used to fund losses in another account.[5]

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.[6]

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[7] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Citizens Board of Governors

Citizens operates under the direction of a nine member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer (CFO). The Governor appoints

[4] The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[5] s. 627.351(6)(b)2b., F.S.
[6] In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.
[7] s. 10, ch. 2013-60 L.O.F.

three members, one of whom serves as a consumer representative.[8] Board members serve three-year staggered terms.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.[9] Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because half of the board members are required by law to have insurance expertise in order to sit on the board.[10]

Agent Appointments

Section 627.351(6)(c)14., F.S., requires Citizens to appoint as its licensed agents only those agents who also hold an appointment with an insurer, who at the time of the agent's initial appointment by Citizens, is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state. As a result of the "initial appointment" language, there are many agents appointed by Citizens who currently do not hold an appointment with another private insurance company. As a result, these agents only try to place business in Citizens regardless if the policy should be submitted to the insurer of last resort.

Hurricane Loss Models

In 1995, the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.[11] Section 627.0628, F.S., lists the 12 members who make up the commission[12]. The Commission is to adopt findings on the accuracy or reliability of the methods, standards, principles, models, and other means used to project hurricane losses. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

[8] s. 627.351(6)(c)4.a., F.S.
[9] Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.
[10] s. 627.351(6)(c)4.a., F.S.
[11] s. 627.0628, F.S.
[12] Insurance Consumer Advocate, senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund, Executive Director of the Citizens Property Insurance Corporation, Director of the Division of Emergency Management, actuary member of the Florida Hurricane Catastrophe Fund Advisory Council, an employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office, a licensed professional structural engineer who is a full-time faculty member in the State University System and who has expertise in wind mitigation techniques appointed by the Governor, and five members appointed by the Chief Financial Officer which must include an expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science, an actuary who is employed full time by a property and casualty insurer that was responsible for at least one percent of the aggregate statewide direct written premium for homeowner insurance in the calendar year preceding the member's appointment to the commission, an expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance, an expert in computer system design who is a full-time member of the faculty of the State University System, and an expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

Public Hurricane Loss Model – Citizens

The Public Hurricane Model was approved by the Florida Legislature in the General Appropriations Act for Fiscal Year 2000-2001, and was directed to contract with the Florida University System. [13] The Financial Services Commission selected the Florida International University (FIU) as the lead institution for development. On August 9, 2005, the Florida Insurance Commissioner commissioned five teams of professionals to visit the FIU campus in Miami to review the efficacy of the Public Hurricane Model. The five teams included: 1) a Meteorological Team; 2) an Engineering Team; 3) an Insured Loss Team; 4) a Computer Science Team; and 5) a Statistical Team. Based on the team's findings, the insurance commissioner recommended to the Governor on August 31, 2005, that the Public Hurricane Model was ready for use.[14]

Section 627.351(6)(n)3., F.S., requires that Citizens must use the Public Model as the minimum benchmark when establishing rates. Citizens has found in certain territories that the Public Model ends up being the highest rates of all the models run. By requiring Citizens to use the Public Model as the minimum benchmark means Citizens must submit rates that are higher than rates that would have been allowed under the private model results.

Citizens Underwriting and Claims Files

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality.[15] The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to keep the information confidential.[16]

Takeout Bonus Agreements

Section 627.3511, F.S., was enacted by the Legislature in 1995[17] and at that time applied to the depopulation of the Residential Property and Casualty Joint Underwriting Association. After the Legislature merged the two underwriting associations to create Citizens in 2002, this section was amended to apply to the depopulation of Citizens.

Take out agreements that were approved under this section allowed for a per policy bonus to be paid to each participating insurer provided that they removed a given number of policies for a set number of years. Today, takeouts from Citizens are no longer approved through takeout bonus agreements. The last Citizens takeout bonus agreement under this section took place in November 2007.

[13] s. 2226, ch. 2000-166, L.O.F.
[14] http://www.floir.com/sitedocuments/flpublichurricanemodel.pdf (Last visited Feb. 2, 2016).
[15] s. 627.351(6)(x)2., F.S.
[16] *Id.*
[17] s. 10, ch. 95-276, L.O.F.

Takeout Non-Bonus Agreements

In January of 2008, Citizens Board of Governors adopted a takeout non-bonus plan that was approved by the Office of Insurance Regulation (OIR) in March of that year. Since that time, most takeout agreements between Citizens and private carriers have occurred under this plan. The OIR has on occasion required stipulations in takeout agreements in addition to the requirements of the approved plan. Until 2009, the OIR required private carriers that removed policies from Citizens through a takeout agreement to write the risk at a rate below the rate of Citizens at that time.[18] Additionally, in November of 2013, the OIR began requiring takeout companies to provide information to the policyholder detailing a rate comparison between the Citizens rate and the private insurer's rate.[19]

Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[20] Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and, if eligible, they are provided instructions on how they can elect (opt-out) and remain with Citizens. Policyholders who do not opt-out within the opt-out timeframe will receive a Notice of Assumption, a non-renewal from Citizens, and a Certificate of Assumption. The policyholder still has an additional timeframe from the receipt of these notices to elect to remain with Citizens. Citizens encourages policyholders who receive private-market offers to consider them carefully and discuss the advantages of such coverage with their agents. Accepting an offer from a private insurer can decrease a Citizens policyholder's potential of assessment.

In November 2011, Citizens reported it had issued 1,472,391 policies. As of January 19, 2016, Citizens reported it had issued 484,788 policies insured.[21] Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. From 2012 through 2015, 1,332,108 policies were removed for Citizens and placed into the private market through the use of the current takeout agreement process.[22]

Citizens Glide Path Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351(6), are subject to the rate standards for property and casualty insurance in s. 627.062, F.S. From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed ten percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[23] The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In

[18] Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)
[19] Id.
[20] s. 627.351(6), F.S.
[21] Citizens Policy Inforce Weekly Summary Report, March 16, 2015.
[22] https://www.citizensfla.com/about/depopinfo.cfm?type=stats&show=pdf&link=/shared/depop/documents/2015.pdf (Last visited Jan. 27, 2016).
[23] s. 627.351(6)(n)6., F.S.

addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Eligibility

Eligibility for a Citizens insurance policy is for the most part verified through the clearing house, which is established in s. 627.3518, F.S. A new policy applicant to Citizens is ineligible if they receive an offer from a participating carrier at a rate that is no greater than 15 percent of the current rate being charged by Citizens. Additionally, a Citizens policy is ineligible for renewal if the policyholder receives an offer from a participating carrier at a rate that is no greater than the current rate being charged by Citizens.

36 Month Reapplication Exception

In 2013, CS/SB 1770 passed the Legislature and was approved by the Governor.[24] The bill created the Citizens policyholder eligibility clearinghouse program and provided Citizens policyholders made ineligible through a private market offer the ability to reapply to Citizens in certain circumstances and be treated as a renewal policyholder under s. 627.3518(5), F.S., rather than a new policyholder. The provision allows "an applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increases the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6."

In 2015, CS/CS/HB 1087 amended s. 627.351(6), F.S., to include a provision that stated "a policyholder whose policy was taken out by an insurer in the previous 36 months is considered a renewal policyholder under s. 627.3518, F.S., if the corporation determines that the insurer continues to insure the policyholder and that the initial premium of the insurer exceeded its estimated premium by more than 10 percent or the insurer increased the rate on the policy in excess of the increase allowed for the corporation under subparagraph (6)(n)6." The Governor vetoed CS/CS/HB 1087; his veto message said "The second issue with the legislation is in regards to the provision that creates a process where the policyholder returns to Citizens even though they are currently insured by a private market insurer."[25]

III. Effect of Proposed Changes:

The bill allows for the consumer representative on the Citizens board to be afforded the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to other members of the Citizens board. The bill requires agents placing policies with Citizens to hold an appointment by an insurer authorized to write and is writing or renewing personal lines or commercial residential property coverage or commercial nonresidential property coverage within the state.

[24] Chapter 2013-60, Laws of Florida.
[25] http://www.flgov.com/wp-content/uploads/2015/06/Transmittal-Letter-6.2.15-HB-1087.pdf (Last visited Jan. 27, 2016).

The bill allows Citizens to use a combination of the public model and private models when calculating the windstorm portion of rates.

The bill expands the list of those who may receive information from the confidential underwriting and claims files to include an entity which has obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent. The information made available to these entities is the same information available to licensed general lines agents. The information may be used only for the purposes of analyzing risks for underwriting in the private insurance market or developing a rating plan and must be kept confidential. In addition, the bill expressly prohibits the use of the data by any of the authorized users, and licensed general lines insurance agents, for direct solicitation of policyholders.

The bill requires Citizens by January 1, 2017, to amend its plan of operations relating to take-out agreements made with private insurers. The amended plan must:

- Establish six cycles for which take-out offers can be made by private insurers to Citizens' policyholders. The provision is intended to decrease the number of solicitations that Citizens policyholders receive pursuant to take-out offers. Proponents of the provision have expressed concern that policyholders who intend to remain with Citizens are sometimes inundated with takeout offers that the policyholder then must affirmatively decline. The bill does not define the length of such cycles or at what times during the year such cycles may occur.
- Require that private insurers include in their take-out offers to Citizens policyholders, a comparison of coverages and rates between the insurer's policy and Citizens policy.
- Require that private insurers agree to offer similar coverage to that being offered by Citizens and that their initial premium must be within ten percent of the estimated premium submitted with the take-out offer. The term "initial premium is somewhat unclear as it could refer to the premium charged by the insurer upon the takeout, or the premium charged at first renewal.
- Require that Citizens compile a list of companies that have shown interest in depopulating a policy and must make the list available to the agent of record. The provision is intended to facilitate the placement of Citizens policies with private market insurers.
- Allow a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate estimated in the initial take-out letter or exceeds the ten percent glide path cap imposed on Citizens policies.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/SB 1630, policyholders in certain territories could see their wind rates lowered with the combining of the results from the public and private model findings.

More private entities will have access to Citizens data which will better help them analyze risks and trends in Florida's insurance market. This may facilitate greater accuracy in underwriting practices and further facilitate the depopulation of Citizens.

Citizens' policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, will have the ability to reapply with Citizens and be rated as a renewal through the clearinghouse. The premiums paid by such policyholders, if ultimately insured by Citizens, will not be greater than the premiums such policyholders would have paid if continuously insured by Citizens. Citizens premium increases are generally limited to no greater than ten percent annually, with exceptions, under s. 627.736(6)(n), F.S.

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: 627.351 and 627.3518.

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 Ethics and Elections on February 16, 2016:
The committee substitute differs from the original in that it:

- Allows Citizens to make its underwriting files and confidential claims files available to licensed rating organizations;
- Requires that licensed rating organizations only use underwriting and confidential claims files for the purpose of developing rating plans; and
- Prohibits a licensed general lines insurance agent from using Citizens' underwriting files and confidential claims files for the direct solicitation of policyholders.

CS by Banking and Insurance on February 1, 2016:
The committee substitute:

- Removes section 1 pertaining to multiline discounts.
- Allows Citizens to use a combination of the public model and private models when calculating windstorm rates.
- Increases to six cycles from three cycles when take-out offers can be made to Citizens policyholders from private insurers.
- Removes a provision pertaining to the use of Citizens forms for three years.
- Relocates the 36 month renewal option to 627.3518, F.S.

B. Amendments:

None.

By the Committees on Ethics and Elections; and Banking and Insurance; and Senator Flores

582-03674-16 20161630c2

A bill to be entitled

An act relating to operations of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; specifying that a consumer representative appointed by the Governor to the Citizens Property Insurance Corporation's board of governors is not prohibited from practicing in a certain profession if required or permitted by law or ordinance; revising the requirements for licensed agents of the corporation; revising provisions related to the corporation's use of certain public and private hurricane loss-projection models in establishing certain rates; revising a provision to permit specified information from certain underwriting and claims files to be made available to certain entities; providing limitations for the use of such information by the entities; requiring the take-out program to be revised for specified purposes by a specified date; requiring the corporation to schedule up to a certain number of cycles annually during which insurers may identify and submit policy take-out requests; specifying information required to be included in such requests; providing conditions that must be agreed to by insurers submitting a request; requiring the corporation to maintain and make available specified lists of insurers to its agents of record; requiring the corporation to provide policyholders and the agents of record with a specified notice regarding their policy renewal options; amending s. 627.3518, F.S.; revising criteria for when an applicant for coverage from the corporation shall be considered a

582-03674-16 20161630c2

renewal; providing an effective date.

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

Section 1. Paragraphs (c), (n), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (ii) is added to that subsection, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane

coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level

may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the

financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within

the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida

Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than

the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's

usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or

a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under

sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or

its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts

to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and,

if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015(3) by ~~with~~ an insurer who ~~at the time of the agent's initial appointment by the corporation~~ is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO

BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final

order of the office.

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

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

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the

corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2010, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided

herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that ~~which~~ affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the

files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent ~~agents~~: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person ~~licensed general lines insurance agent~~ must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a

private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. Such

revisions must comply with this paragraph no later than January 1, 2017.

1. The corporation must schedule no more than 6 cycles per year during which insurers may identify policies they wish to take out and may submit requests to take out such policies to the corporation in a form and manner prescribed by the corporation. An insurer's take-out request must include a description of the coverages offered and an estimated premium. In submitting any take-out request, an insurer must agree to offer comparable coverage to that offered by the corporation and that the initial premium of the insurer after assumption will not exceed its estimated premium by more than 10 percent, excluding coverage changes, surcharges, and assessments.

2. For each policy of the corporation identified under subparagraph 1., the corporation shall maintain and make available to the agent of record a consolidated list of all insurers requesting the policy. The list must contain the information described in subparagraph 1.

3. The corporation shall provide written notice to its policyholders and the agents of record informing them of their option to accept one of the take-out offers presented or to remain with the corporation. The notice must be in a format prescribed by the corporation and include the amount of the estimated premium for the coverage of each offering insurer, the amount of the premium for the coverage provided by the corporation, and a description of the coverage offered by each insurer and the coverage provided by the corporation, which includes an explanation of any differences among the coverage offered by each insurer and the coverage provided by the

corporation.

Section 2. Subsection (5) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an

offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who in the previous 36 months has been assumed through a take-out offer from an insurer or who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the same authorized insurer making the offer of coverage ~~pursuant to this subsection~~ continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

Section 3. This act shall take effect July 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 Appropriations

BILL:	PCS/SB 1638 (698686)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education) and Senator Lee
SUBJECT:	Postsecondary Education for Veterans
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Favorable**
2.	Smith	Elwell	AED	**Recommend: Fav/CS**
3.	Smith	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1638 expands education and certification opportunities for members of the United States military. Specifically, the bill:

- Requires the Department of Education to annually, for specified tests, identify and publish minimum scores, maximum credit, and course or courses for which college credit must be awarded.
- Modifies the residency requirements for recipients of a Purple Heart or other combat decoration superior in precedence to qualify for a waiver from tuition for undergraduate college credit programs and career certificate programs.
- Adds new methods for demonstrating mastery of subject area knowledge for educator certification purposes.

The bill has an insignificant impact on state funds. State colleges and universities may generate slightly less in tuition revenue due to the requirements of the bill.

The bill takes effect July 1, 2016.

II. Present Situation:

The Florida Legislature has enacted laws to provide members of the Armed Forces access to public postsecondary education in the state.

College Credit for Military Training and Education Courses

The Board of Governors for the State University System of Florida (BOG) and the State Board of Education (SBE or state board) must adopt rules that enable eligible members of the United States Armed Forces to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military.[1] Such rules must include procedures for credential evaluation and the award of academic college credit, including but not limited to, equivalency and alignment of military coursework with appropriate college courses, course descriptions, type and amount of college credit that may be awarded, and transfer of credit.[2]

Pursuant to law,[3] the BOG and the state board have adopted in regulation and rule, respectively, policies for granting college credit for military training and coursework.[4] For instance, state university and Florida College System (FCS) institution boards of trustees must grant college credit to students who have received military training or coursework that is recognized by the American Council on Education (ACE) and specify if such training or coursework fulfills general education, major, or degree requirements at the receiving institution.[5]

Fee Waivers

The term "tuition" is defined as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in this state."[6] An "out-of-state fee" is the additional fee for instruction provided by a public postsecondary educational institution charged to a student who does not qualify for the in-state tuition rate."[7]

A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.[8] A "non-resident for tuition purposes" is defined as a "person who does not qualify for the in-state tuition rate,"[9] and pays the out-of-state fee in addition to tuition.

Florida law affords exemptions[10] and waivers[11] from fees for students who meet specified criteria.

Waivers for Purple Heart or Other Combat Decoration

In accordance with the law, a state university, an FCS institution, a career center operated by a school district, or a charter technical career center must waive tuition for undergraduate college

[1] Section 1004.096, F.S.
[2] *Id*.
[3] *Id*.
[4] Board of Governors Regulation 6.013 and Rule 6A-14.0302, F.A.C.
[5] *Id*.
[6] Section 1009.01(1), F.S. Additionally, the definition states that "[a] charge for any other purpose shall not be included within this fee." *Id.*
[7] Section 1009.01(2), F.S. Adding that "[a] charge for any other purpose shall not be included within this fee." *Id.*
[8] Section 1009.21(1)(g), F.S.
[9] Section 1009.21(1)(e), F.S.
[10] Section 1009.25, F.S.
[11] Section 1009.26, F.S.

credit programs and career certificate programs for each recipient of a Purple Heart or other combat decoration superior in precedence.[12] To qualify for this fee waiver, the recipient of such combat decoration must:[13]

- Be enrolled as a full-time, part-time, or summer-school student in a program that terminates in an associate or baccalaureate degree, a college credit certificate, or a career certificate.
- Currently, and at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, be a resident of this state.
- Submit to the university, college, or career center the DD-214 form issued at the time of separation from service as documentation that the student has received the Purple Heart or other combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

The fee waiver for a Purple Heart recipient or recipient of other combat decoration superior in precedence is applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.[14]

In 2014-2015, 100 students at FCS institutions received a fee waiver as the result of receiving a Purple Heart or other combat decoration superior in precedence.[15] At state universities, 39 students received fee waivers as the result of receiving a Purple Heart or other combat decoration superior in precedence.[16]

Educator Certification Requirements

Current law provides for eligibility criteria, mastery of general and subject area knowledge, mastery of professional preparation and education competence, the types and terms of certification, as well as examinations.[17]

Specifically, for subject area knowledge, the law specifies the following acceptable means of demonstrating mastery:[18]

- For a subject requiring only a baccalaureate degree for which a Florida subject area examination has been developed, achievement of a passing score on the Florida-developed subject area examination specified in state board rule;
- For a subject for which a Florida subject area examination has not been developed, achievement of a passing score on a standardized examination specified in state board rule, including, but not limited to, passing scores on both the oral proficiency and written

[12] Section 1009.26(8), F.S. "The U.S. Department of Veterans Affairs indicates that the Purple Heart is ranked immediately behind the bronze star in order of precedence. The Department of Florida, Military Order of the Purple Heart of the United States of America notes that there are over 2,700 members in Florida." Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016), at 2.
[13] *Id*.
[14] *Id*.
[15] Email, Florida Department of Education (Jan. 20, 2016), on file with the Committee on Higher Education.
[16] Email, Florida Board of Governors (Jan. 21, 2016), on file with the Committee on Higher Education.
[17] Section 1012.56, F.S.
[18] Section 1012.56(5), F.S.

proficiency examinations administered by the American Council on the Teaching of Foreign Languages;
- For a subject for which a Florida subject area examination has not been developed or a standardized examination has not been specified in state board rule, completion of the subject area specialization requirements specified in state board rule and verification of the attainment of the essential subject matter competencies by the district school superintendent of the employing school district or chief administrative officer of the employing state-supported or private school;
- For a subject requiring a master's or higher degree, completion of the subject area specialization requirements specified in state board rule and achievement of a passing score on the Florida-developed subject area examination or a standardized examination specified in state board rule;
- Documentation of a valid professional standard teaching certificate issued by another state; or
- Documentation of a valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education.

School districts are encouraged to provide mechanisms for middle grades teachers holding only a K-6 teaching certificate to obtain a subject area coverage for middle grades through postsecondary coursework or district add-on certification.[19]

III. Effect of Proposed Changes:

This bill expands education and certification opportunities for members of the United States military. Specifically, the bill:
- Requires the Department of Education to annually, for specified tests, identify and publish minimum scores, maximum credit, and course or courses for which college credit must be awarded.
- Modifies the residency requirements for recipients of a Purple Heart or other combat decoration superior in precedence to qualify for a waiver from tuition for undergraduate college credit programs and career certificate programs.
- Adds new methods for demonstrating mastery of subject area knowledge, for educator certification purposes.

College Credit for Military Training and Education Courses

The bill expands the mechanism through which eligible members of the United States Armed Forces can earn college credit for military experience. Specifically, the bill identifies the following three types of subject tests that members of Armed Forces can take to generate college credit:
- Excelsior College subject examination.

[19] *Id*.

- Defense Activity for Non-Traditional Education Support (DANTES) subject standardized test.[20]
- Defense Language Proficiency Test (DLPT).[21]

The bill requires the Department of Education (department) to annually identify and publish minimum scores, maximum credit, and course or courses for which credit must be awarded for each of the specified examinations. The department must identify such courses in the general education core[22] curriculum of each state university and FCS institution. In effect, the bill codifies Excelsior College subject examination, DANTES, and Defense Language Proficiency Tests (DLPT) as authorized tests that students can take to earn college credit by demonstrating subject area competency on such tests.

Current law requires the department to annually identify and publish the minimum scores, maximum credit, and course or courses for which credit must be awarded for each:[23]

- College Level Examination Program (CLEP) subject examination,
- College Board Advanced Placement (AP) Program examination,
- Advanced International Certificate of Education (AICE) examination, and the
- International Baccalaureate (IB) examination.

The law does not specify such requirements for Excelsior College subject examination, DANTES, and DLPT. However, the Articulation Coordinating Committee (ACC)[24] has established passing scores and course and credit equivalents for the tests that are currently specified in law as well as for DANTES and Excelsior College exam.[25] The credit-by-exam equivalencies have been adopted in rule by the State Board of Education (SBE or state board).[26] If a student attains a passing score on the AP, AICE, IB, or CLEP exam, state universities and FCS institutions must award the minimum credit for the course or courses specified on the

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[20] Defense Activity for Non-Traditional Education Support (DANTES) is a division of the Department of Defense that provides educational support to military members. In 2004, the exams were acquired and are now owned and administered by Prometric. Prometric owns and administers DSST exams. DSST, *What is DSST?* http://getcollegecredit.com/what_is_dsst/ (last visited Jan. 20, 2016); *see also* DANTES, *DANTES*, http://www.dantes.doded.mil/#sthash.nYKTxyfV.dpbs (last visited Jan. 20, 2016). DSST offers a suite of more than 30 exams in college subject areas such as social sciences, math, applied technology, business, physical sciences, and humanities. DSST, *About DSST*, http://getcollegecredit.com/about (last visited Jan. 20, 2016).

[21] The Language Proficiency Assessment Directorate of the Defense Language Institute Foreign Language Center designs, develops, validates, implements, and monitors Defense Language, Proficiency Tests (DLPTs) to measure proficiency in listening and reading comprehension. Defense Language Institute Foreign Language Center, *Language Proficiency Assessment Directorate*, http://dliflc.edu/academics/evaluation-standardization/ (last visited Jan. 20, 2016).

[22] General education core course options consist of a maximum of five courses within each of the subject areas of communication, mathematics, social sciences, humanities, and natural sciences. The course options are identified by faculty committees that are jointly appointed by the chair of the State Board of Education and the chair of the Board of Governors. Section 1007.25(3), F.S.; *see also* Rule 6A-14.0303, F.A.C. and Board of Governors Regulation 8.005.

[23] Section 1007.27(2), F.S.

[24] The Articulation Coordinating Committee (ACC) is established by the Commissioner of Education in consultation with the Chancellor of the State University System, to make recommendations related to statewide articulation policies regarding access, quality, and data reporting. The ACC serves as an advisory body to the Higher Education Coordinating Council, the State Board of Education, and the Board of Governors. Section 1007.01(3), F.S.

[25] Florida Department of Education, *Articulation Coordinating Committee Credit-By-Exam Equivalencies* (Initially adopted Nov. 14, 2001), *available at* http://www.fldoe.org/core/fileparse.php/5421/urlt/0078391-acc-cbe.pdf.

[26] Rule 6A-10.024, F.A.C.

credit-by-exam equivalencies list, even if such institutions do not offer the course or courses.[27] The credit-by-exam equivalencies will need to be updated to include DLPT.

Additionally, the bill modifies current law to apply the existing mechanisms for generating college credit (based on military training and coursework) to eligible servicemembers and honorably discharged veterans of the United States Armed Forces. As a result, such members and veterans of the United States Armed Forces will also be able to earn college credit at public postsecondary educational institutions through the specified mechanisms.[28]

Fee Waivers

The bill modifies the residency requirements for recipients of Purple Heart or other combat decoration superior in precedence to qualify for the fee waiver.[29]

Current eligibility requirements for the fee waiver specify that a student must be both a resident of Florida currently, and must have been a Florida resident at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence. The bill changes this residency requirement to allow students to qualify for the fee waiver if the student is currently or was at the time of the military action that resulted in the awarding of the combat decoration, a resident of this state, but not both. As a result, additional students will be able to receive the fee waiver to access public postsecondary education in Florida.

Educator Certification Requirements

The bill modifies educator certification requirements by adding new methods for demonstrating mastery of subject area knowledge. Specifically, the bill allows individuals to demonstrate subject area competency through documentation of:

- Successful completion of a United States Defense Language Institute Foreign Language Center program,[30] or
- A passing score on the DLPT.

The bill recognizes military training and coursework and specifies that the United States Defense Language Institute Foreign Language Center program and the DLPT are acceptable means to demonstrate mastery of subject area knowledge. As a result, individuals will have additional means to demonstrate such competency.[31]

The bill takes effect July 1, 2016.

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[27] Florida Department of Education, *Articulation Coordinating Committee Credit-By-Exam Equivalencies* (Initially adopted Nov. 14, 2001), *available at* http://www.fldoe.org/core/fileparse.php/5421/urlt/0078391-acc-cbe.pdf, at 1.
[28] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016), at 3.
[29] The waiver amounts to a waiver from tuition for undergraduate college credit programs and career certificate programs for each recipient of a Purple Heart or other combat decoration superior in precedence. Section 1009.26(8), F.S.
[30] The Defense Language Institute Foreign Language Center offers courses in many languages for various duration (e.g., 26-weeks long course in French and 64-weeks long course in Arabic – Egyptian). Defense Language Institute Foreign Language Center, *Languages Taught at DLIFLC and Duration of Courses*, http://dliflc.edu/about/languages-at-dliflc/ (last visited Jan. 20, 2016).
[31] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016), at 5.

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:

PCS/SB 1638 expands the eligibility to receive a tuition waiver for each recipient of a Purple Heart or another combat decoration superior in precedence by allowing to students to either be a Florida resident currently or have been a Florida resident at the time of the military action that resulted in the awarding of the combat decoration. The bill also expands the mechanism through which eligible members of the United States Armed Forces can earn college credit for military experience.

For the State University System, the statutory resident undergraduate tuition rate per credit hour in 2015-2016 is $105.07.[32] Tuition will be waived for each eligible recipient of a Purple Heart or other combat decoration superior in precedence for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled. A student enrolled in a program requiring 120 credit hours could save approximately $14,000.

For the Florida College System, the statutory resident tuition rate per credit hour in 2015-2016 is $91.79 for baccalaureate degree programs.[33] Tuition shall be waived for each eligible recipient of a Purple Heart or other combat decoration superior in precedence for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled. A student enrolled in a program requiring 120 credit hours could save approximately $12,000.

[32] Section 1009.24(4)(a), F.S.
[33] Section 1009.23(3)(b), F.S.

C. Government Sector Impact:

The bill will have an indeterminable fiscal impact on state universities because the annual loss of tuition revenue under the waiver expansion is contingent upon the number of eligible students for a given year. In 2012-2013, the most recent year for which data is available, there were 46 Purple Heart or other combat decoration fee waivers given to eligible students attending a state university. [34] For Fiscal Year 2015-2016, the statutory resident undergraduate tuition rate per credit hour is $105.07.[35] Assuming these students attend full-time and take 30 credit hours per year, the state university system would have generated approximately $145,000 less in tuition revenues in Fiscal Year 2015-2016.

The bill will have an indeterminable fiscal impact on the Florida College System because the annual loss of tuition revenue under the waiver expansion is contingent upon the number of eligible students for a given year. According to the Department of Education, in 2014-2015, there were 100 Purple Heart or other combat decoration fee waivers given to eligible students attending a Florida College System institution at total amount of $230,000. [36]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1004.096, 1007.27, 1009.26, and 1012.56.

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 Education on February 11, 2016:
The committee substitute:

- Moves the section that specifies the types of subject tests that members of Armed Forces can take to generate college credit from s. 1004.096, F.S. to s. 1007.27, F.S. relating to articulated acceleration mechanisms.
- Changes the residency requirements of s. 1009.26, F.S. to allow students to qualify for the fee waiver if the student is currently, or was at the time of the military action

[34] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016).
[35] Section 1009.24(4)(a), F.S.
[36] Email, Florida Department of Education (Feb. 5, 2016), on file with the Appropriations Subcommittee on Education.

that resulted in the awarding of the combat decoration, a resident of this state, but not both.

B. Amendments:

None.

674072

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Lee) recommended the following:

Senate Amendment

Delete line 23

and insert:

servicemembers or veterans ~~members~~ of the

698686

576-03416-16

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to postsecondary education for veterans; amending s. 1004.096, F.S.; specifying individuals who are eligible for college credit for college-level military training and education; amending s. 1007.27, F.S.; expanding the list of examinations for which the department is required to establish college credit equivalencies; amending s. 1009.26, F.S.; revising the residency requirement for certain tuition waivers for recipients of specified military decorations; conforming provisions; amending s. 1012.56, F.S.; providing that specified programs and test scores meet certain educator certification requirements; providing an effective date.

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

Section 1. Section 1004.096, Florida Statutes, is amended to read:

1004.096 College credit for military training and education courses.—The Board of Governors shall adopt regulations and the State Board of Education shall adopt rules that enable eligible servicemembers or honorably discharged veterans ~~members~~ of the United States Armed Forces to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military. The regulations and rules shall include procedures for credential evaluation and

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576-03416-16

the award of academic college credit, including, but not limited to, equivalency and alignment of military coursework with appropriate college courses, course descriptions, type and amount of college credit that may be awarded, and transfer of credit.

Section 2. Subsection (2) of section 1007.27, Florida Statutes, is amended to read:

1007.27 Articulated acceleration mechanisms.—

(2) The Department of Education shall annually identify and publish the minimum scores, maximum credit, and course or courses for which credit is to be awarded for each College Level Examination Program (CLEP) subject examination, College Board Advanced Placement Program examination, Advanced International Certificate of Education examination, ~~and~~ International Baccalaureate examination, Excelsior College subject examination, Defense Activity for Non-Traditional Education Support (DANTES) subject standardized test, and Defense Language Proficiency Test (DLPT). The department shall use student performance data in subsequent postsecondary courses to determine the appropriate examination scores and courses for which credit is to be granted. Minimum scores may vary by subject area based on available performance data. In addition, the department shall identify such courses in the general education core curriculum of each state university and Florida College System institution.

Section 3. Subsection (8) of section 1009.26, Florida Statutes, is amended to read:

1009.26 Fee waivers.—

(8) A state university, a Florida College System

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institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive tuition for undergraduate college credit programs and career certificate programs for each recipient of a Purple Heart or another combat decoration superior in precedence who:

(a) Is enrolled as a full-time, part-time, or summer-school student in a program that terminates in an associate or a baccalaureate degree, a college credit certificate, or a career certificate;

(b) Is currently, or ~~and~~ was at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, a resident of this state; and

(c) Submits to the ~~state~~ university, ~~the Florida College System~~ institution, or ~~the career~~ center ~~operated by a school district under s. 1001.44, or the charter technical career center~~ the DD-214 form issued at the time of separation from service as documentation that the student has received a Purple Heart or another combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

Such a waiver for a Purple Heart recipient or recipient of another combat decoration superior in precedence shall be applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.

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Section 4. Subsection (5) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(5) MASTERY OF SUBJECT AREA KNOWLEDGE.—Acceptable means of demonstrating mastery of subject area knowledge are:

(a) For a subject requiring only a baccalaureate degree for which a Florida subject area examination has been developed, achievement of a passing score on the Florida-developed subject area examination specified in state board rule;

(b) For a subject for which a Florida subject area examination has not been developed, achievement of a passing score on a standardized examination specified in state board rule, including, but not limited to, passing scores on both the oral proficiency and written proficiency examinations administered by the American Council on the Teaching of Foreign Languages;

(c) For a subject for which a Florida subject area examination has not been developed or a standardized examination has not been specified in state board rule, completion of the subject area specialization requirements specified in state board rule and verification of the attainment of the essential subject matter competencies by the district school superintendent of the employing school district or chief administrative officer of the employing state-supported or private school;

(d) For a subject requiring a master’s or higher degree, completion of the subject area specialization requirements specified in state board rule and achievement of a passing score on the Florida-developed subject area examination or a

standardized examination specified in state board rule;

(e) Documentation of a valid professional standard teaching certificate issued by another state; ~~or~~

(f) Documentation of a valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education;

(g) Documentation of successful completion of a United States Defense Language Institute Foreign Language Center program; or

(h) Documentation of a passing score on the Defense Language Proficiency Test (DLPT).

School districts are encouraged to provide mechanisms for middle grades teachers holding only a K-6 teaching certificate to obtain a subject area coverage for middle grades through postsecondary coursework or district add-on certification.

Section 5. This act shall take effect July 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 Appropriations

BILL:	SB 1638
INTRODUCER:	Senator Lee
SUBJECT:	Postsecondary Education for Veterans
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Favorable**
2.	Smith	Elwell	AED	**Recommend: Fav/CS**
3.	Smith	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1638 expands education and certification opportunities for members of the United States military. Specifically, the bill:

- Requires the Department of Education to annually, for specified tests, identify and publish minimum scores, maximum credit, and course or courses for which college credit must be awarded.
- Modifies the residency requirements for recipients of a Purple Heart or other combat decoration superior in precedence to qualify for a waiver from tuition for undergraduate college credit programs and career certificate programs.
- Adds new methods for demonstrating mastery of subject area knowledge for educator certification purposes.

The bill has an insignificant impact on state funds. State colleges and universities may generate slightly less in tuition revenue due to the requirements of the bill.

The bill takes effect July 1, 2016.

II. Present Situation:

The Florida Legislature has enacted laws to provide members of the Armed Forces access to public postsecondary education in the state.

College Credit for Military Training and Education Courses

The Board of Governors for the State University System of Florida (BOG) and the State Board of Education (SBE or state board) must adopt rules that enable eligible members of the United States Armed Forces to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military.[1] Such rules must include procedures for credential evaluation and the award of academic college credit, including but not limited to, equivalency and alignment of military coursework with appropriate college courses, course descriptions, type and amount of college credit that may be awarded, and transfer of credit.[2]

Pursuant to law,[3] the BOG and the state board have adopted in regulation and rule, respectively, policies for granting college credit for military training and coursework.[4] For instance, state university and Florida College System (FCS) institution boards of trustees must grant college credit to students who have received military training or coursework that is recognized by the American Council on Education (ACE) and specify if such training or coursework fulfills general education, major, or degree requirements at the receiving institution.[5]

Fee Waivers

The term "tuition" is defined as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in this state."[6] An "out-of-state fee" is the additional fee for instruction provided by a public postsecondary educational institution charged to a student who does not qualify for the in-state tuition rate."[7]

A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.[8] A "non-resident for tuition purposes" is defined as a "person who does not qualify for the in-state tuition rate,"[9] and pays the out-of-state fee in addition to tuition.

Florida law affords exemptions[10] and waivers[11] from fees for students who meet specified criteria.

Waivers for Purple Heart or Other Combat Decoration

In accordance with the law, a state university, an FCS institution, a career center operated by a school district, or a charter technical career center must waive tuition for undergraduate college credit programs and career certificate programs for each recipient of a Purple Heart or other

[1] Section 1004.096, F.S.
[2] *Id*.
[3] *Id*.
[4] Board of Governors Regulation 6.013 and Rule 6A-14.0302, F.A.C.
[5] *Id*.
[6] Section 1009.01(1), F.S. Additionally, the definition states that "[a] charge for any other purpose shall not be included within this fee." *Id.*
[7] Section 1009.01(2), F.S. Adding that "[a] charge for any other purpose shall not be included within this fee." *Id.*
[8] Section 1009.21(1)(g), F.S.
[9] Section 1009.21(1)(e), F.S.
[10] Section 1009.25, F.S.
[11] Section 1009.26, F.S.

combat decoration superior in precedence.[12] To qualify for this fee waiver, the recipient of such combat decoration must:[13]

- Be enrolled as a full-time, part-time, or summer-school student in a program that terminates in an associate or baccalaureate degree, a college credit certificate, or a career certificate.
- Currently, and at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, be a resident of this state.
- Submit to the university, college, or career center the DD-214 form issued at the time of separation from service as documentation that the student has received the Purple Heart or other combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

The fee waiver for a Purple Heart recipient or recipient of other combat decoration superior in precedence is applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.[14]

In 2014-2015, 100 students at FCS institutions received a fee waiver as the result of receiving a Purple Heart or other combat decoration superior in precedence.[15] At state universities, 39 students received fee waivers as the result of receiving a Purple Heart or other combat decoration superior in precedence.[16]

Educator Certification Requirements

Current law provides for eligibility criteria, mastery of general and subject area knowledge, mastery of professional preparation and education competence, the types and terms of certification, as well as examinations.[17]

Specifically, for subject area knowledge, the law specifies the following acceptable means of demonstrating mastery:[18]

- For a subject requiring only a baccalaureate degree for which a Florida subject area examination has been developed, achievement of a passing score on the Florida-developed subject area examination specified in state board rule;
- For a subject for which a Florida subject area examination has not been developed, achievement of a passing score on a standardized examination specified in state board rule, including, but not limited to, passing scores on both the oral proficiency and written proficiency examinations administered by the American Council on the Teaching of Foreign Languages;

[12] Section 1009.26(8), F.S. "The U.S. Department of Veterans Affairs indicates that the Purple Heart is ranked immediately behind the bronze star in order of precedence. The Department of Florida, Military Order of the Purple Heart of the United States of America notes that there are over 2,700 members in Florida." Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016), at 2.
[13] *Id*.
[14] *Id*.
[15] Email, Florida Department of Education (Jan. 20, 2016), on file with the Committee on Higher Education.
[16] Email, Florida Board of Governors (Jan. 21, 2016), on file with the Committee on Higher Education.
[17] Section 1012.56, F.S.
[18] Section 1012.56(5), F.S.

- For a subject for which a Florida subject area examination has not been developed or a standardized examination has not been specified in state board rule, completion of the subject area specialization requirements specified in state board rule and verification of the attainment of the essential subject matter competencies by the district school superintendent of the employing school district or chief administrative officer of the employing state-supported or private school;
- For a subject requiring a master's or higher degree, completion of the subject area specialization requirements specified in state board rule and achievement of a passing score on the Florida-developed subject area examination or a standardized examination specified in state board rule;
- Documentation of a valid professional standard teaching certificate issued by another state; or
- Documentation of a valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education.

School districts are encouraged to provide mechanisms for middle grades teachers holding only a K-6 teaching certificate to obtain a subject area coverage for middle grades through postsecondary coursework or district add-on certification.[19]

III. Effect of Proposed Changes:

This bill expands education and certification opportunities for members of the United States military. Specifically, the bill:

- Requires the Department of Education to annually, for specified tests, identify and publish minimum scores, maximum credit, and course or courses for which college credit must be awarded.
- Modifies the residency requirements for recipients of a Purple Heart or other combat decoration superior in precedence to qualify for a waiver from tuition for undergraduate college credit programs and career certificate programs.
- Adds new methods for demonstrating mastery of subject area knowledge, for educator certification purposes.

College Credit for Military Training and Education Courses

The bill expands the mechanism through which eligible members of the United States Armed Forces can earn college credit for military experience. Specifically, the bill identifies the following three types of subject tests that members of Armed Forces can take to generate college credit:

- Excelsior College subject examination.
- Defense Activity for Non-Traditional Education Support (DANTES) subject standardized test.[20]

[19] *Id*.

[20] Defense Activity for Non-Traditional Education Support (DANTES) is a division of the Department of Defense that provides educational support to military members. In 2004, the exams were acquired and are now owned and administered by Prometric. Prometric owns and administers DSST exams. DSST, *What is DSST?* http://getcollegecredit.com/what_is_dsst/ (last visited Jan. 20, 2016); *see also* DANTES, *DANTES*, http://www.dantes.doded.mil/#sthash.nYKTxyfV.dpbs (last visited

- Defense Language Proficiency Test (DLPT).[21]

The bill requires the Department of Education (department) to annually identify and publish minimum scores, maximum credit, and course or courses for which credit must be awarded for each of the specified examinations. The department must identify such courses in the general education core[22] curriculum of each state university and FCS institution. In effect, the bill codifies Excelsior College subject examination, DANTES, and Defense Language Proficiency Tests (DLPT) as authorized tests that students can take to earn college credit by demonstrating subject area competency on such tests.

Current law requires the department to annually identify and publish the minimum scores, maximum credit, and course or courses for which credit must be awarded for each:[23]

- College Level Examination Program (CLEP) subject examination,
- College Board Advanced Placement (AP) Program examination,
- Advanced International Certificate of Education (AICE) examination, and the
- International Baccalaureate (IB) examination.

The law does not specify such requirements for Excelsior College subject examination, DANTES, and DLPT. However, the Articulation Coordinating Committee (ACC)[24] has established passing scores and course and credit equivalents for the tests that are currently specified in law as well as for DANTES and Excelsior College exam.[25] The credit-by-exam equivalencies have been adopted in rule by the State Board of Education (SBE or state board).[26] If a student attains a passing score on the AP, AICE, IB, or CLEP exam, state universities and FCS institutions must award the minimum credit for the course or courses specified on the credit-by-exam equivalencies list, even if such institutions do not offer the course or courses.[27] The credit-by-exam equivalencies will need to be updated to include DLPT.

Jan. 20, 2016). DSST offers a suite of more than 30 exams in college subject areas such as social sciences, math, applied technology, business, physical sciences, and humanities. DSST, *About DSST*, http://getcollegecredit.com/about (last visited Jan. 20, 2016).

[21] The Language Proficiency Assessment Directorate of the Defense Language Institute Foreign Language Center designs, develops, validates, implements, and monitors Defense Language, Proficiency Tests (DLPTs) to measure proficiency in listening and reading comprehension. Defense Language Institute Foreign Language Center, *Language Proficiency Assessment Directorate*, http://dliflc.edu/academics/evaluation-standardization/ (last visited Jan. 20, 2016).

[22] General education core course options consist of a maximum of five courses within each of the subject areas of communication, mathematics, social sciences, humanities, and natural sciences. The course options are identified by faculty committees that are jointly appointed by the chair of the State Board of Education and the chair of the Board of Governors. Section 1007.25(3), F.S.; *see also* Rule 6A-14.0303, F.A.C. and Board of Governors Regulation 8.005.

[23] Section 1007.27(2), F.S.

[24] The Articulation Coordinating Committee (ACC) is established by the Commissioner of Education in consultation with the Chancellor of the State University System, to make recommendations related to statewide articulation policies regarding access, quality, and data reporting. The ACC serves as an advisory body to the Higher Education Coordinating Council, the State Board of Education, and the Board of Governors. Section 1007.01(3), F.S.

[25] Florida Department of Education, *Articulation Coordinating Committee Credit-By-Exam Equivalencies* (Initially adopted Nov. 14, 2001), *available at* http://www.fldoe.org/core/fileparse.php/5421/urlt/0078391-acc-cbe.pdf.

[26] Rule 6A-10.024, F.A.C.

[27] Florida Department of Education, *Articulation Coordinating Committee Credit-By-Exam Equivalencies* (Initially adopted Nov. 14, 2001), *available at* http://www.fldoe.org/core/fileparse.php/5421/urlt/0078391-acc-cbe.pdf, at 1.

Additionally, the bill modifies current law to apply the existing mechanisms for generating college credit (based on military training and coursework) to eligible servicemembers and honorably discharged veterans of the United States Armed Forces. As a result, such members and veterans of the United States Armed Forces will also be able to earn college credit at public postsecondary educational institutions through the specified mechanisms.[28]

Fee Waivers

The bill modifies the residency requirements for recipients of Purple Heart or other combat decoration superior in precedence to qualify for the fee waiver.[29]

Current eligibility requirements for the fee waiver specify that a student must be a resident of Florida currently, and must have been a Florida resident at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence. The bill changes this residency requirement to allow students to qualify for the fee waiver by physically residing in Florida while enrolled in a state university, FCS institution, or career center. As a result, additional students will be able to receive the fee waiver to access public postsecondary education in Florida.

However, students currently utilizing the fee waiver that are stationed at military bases just outside of Florida who travel to campus for their courses, and those at more remote locations who are enrolled in online courses may become ineligible for the waiver while they do not physically reside in the state.

Educator Certification Requirements

The bill modifies educator certification requirements by adding new methods for demonstrating mastery of subject area knowledge. Specifically, the bill allows individuals to demonstrate subject area competency through documentation of:

- Successful completion of a United States Defense Language Institute Foreign Language Center program,[30] or
- A passing score on the DLPT.

The bill recognizes military training and coursework and specifies that the United States Defense Language Institute Foreign Language Center program and the DLPT are acceptable means to demonstrate mastery of subject area knowledge. As a result, individuals will have additional means to demonstrate such competency.[31]

The bill takes effect July 1, 2016.

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[28] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016), at 3.
[29] The waiver amounts to a waiver from tuition for undergraduate college credit programs and career certificate programs for each recipient of a Purple Heart or other combat decoration superior in precedence. Section 1009.26(8), F.S.
[30] The Defense Language Institute Foreign Language Center offers courses in many languages for various duration (e.g., 26-weeks long course in French and 64-weeks long course in Arabic – Egyptian). Defense Language Institute Foreign Language Center, *Languages Taught at DLIFLC and Duration of Courses*, http://dliflc.edu/about/languages-at-dliflc/ (last visited Jan. 20, 2016).
[31] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016), at 5.

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 1638 expands the eligibility to receive a tuition waiver for each recipient of a Purple Heart or another combat decoration superior in precedence by removing a requirement that the recipient have been a Florida resident at the time of the military action that resulted in the awarding of the combat decoration. The bill also expands the mechanism through which eligible members of the United States Armed Forces can earn college credit for military experience.

For the State University System, the statutory resident undergraduate tuition rate per credit hour in 2015-2016 is $105.07.[32] Tuition will be waived for each eligible recipient of a Purple Heart or other combat decoration superior in precedence for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled. A student enrolled in a program requiring 120 credit hours could save approximately $14,000.

For the Florida College System, the statutory resident tuition rate per credit hour in 2015-2016 is $91.79 for baccalaureate degree programs.[33] Tuition shall be waived for each eligible recipient of a Purple Heart or other combat decoration superior in precedence for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled. A student enrolled in a program requiring 120 credit hours could save approximately $12,000.

[32] Section 1009.24(4)(a), F.S.
[33] Section 1009.23(3)(b), F.S.

C. Government Sector Impact:

The bill will have an indeterminable fiscal impact on state universities because the annual loss of tuition revenue under the waiver expansion is contingent upon the number of eligible students for a given year. In 2012-2013, the most recent year for which data is available, there were 46 Purple Heart or other combat decoration fee waivers given to eligible students attending a state university.[34] For Fiscal Year 2015-2016, the statutory resident undergraduate tuition rate per credit hour is $105.07.[35] Assuming these students attend full-time and take 30 credit hours per year, the state university system would have generated approximately $145,000 less in tuition revenues in Fiscal Year 2015-2016.

The bill will have an indeterminable fiscal impact on the Florida College System because the annual loss of tuition revenue under the waiver expansion is contingent upon the number of eligible students for a given year. According to the Department of Education, in 2014-2015, there were 100 Purple Heart or other combat decoration fee waivers given to eligible students attending a Florida College System institution at total amount of $230,000.[36]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1004.096, 1009.26, and 1012.56.

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.

[34] Board of Governors, 2016 Agency Legislative Bill Analysis for SB 1638 (Jan. 20, 2016).
[35] Section 1009.24(4)(a), F.S.
[36] Email, Florida Department of Education (Feb. 5, 2016), on file with the Appropriations Subcommittee on Education.

By Senator Lee

24-01476A-16 20161638__

A bill to be entitled

An act relating to postsecondary education for veterans; amending s. 1004.096, F.S.; directing the Department of Education to award postsecondary course credit for specified examinations and tests; amending s. 1009.26, F.S.; revising the residency requirement for certain tuition waivers for recipients of specified military decorations; conforming provisions; amending s. 1012.56, F.S.; providing that specified programs and test scores meet certain educator certification requirements; providing an effective date.

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

Section 1. Section 1004.096, Florida Statutes, is amended to read:

1004.096 College credit for military training, ~~and~~ education courses, and subject examinations.—

(1) The Board of Governors shall adopt regulations and the State Board of Education shall adopt rules that enable eligible servicemembers or honorably discharged veterans ~~members~~ of the United States Armed Forces to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military. The regulations and rules shall include procedures for credential evaluation and the award of academic college credit, including, but not limited to, equivalency and alignment of military coursework with appropriate college courses, course descriptions, type and amount of college credit that may be awarded, and transfer of credit.

(2) The department shall annually identify and publish the

24-01476A-16 20161638__

minimum scores, maximum credit, and course or courses for which credit is to be awarded for each Excelsior College subject examination, Defense Activity for Non-Traditional Education Support (DANTES) subject standardized test, and Defense Language Proficiency Test (DLPT). The department shall identify such courses in the general education core curriculum of each state university and Florida College System institution.

Section 2. Subsection (8) of section 1009.26, Florida Statutes, is amended to read:

1009.26 Fee waivers.—

(8) A state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive tuition for undergraduate college credit programs and career certificate programs for each recipient of a Purple Heart or another combat decoration superior in precedence who:

(a) Is enrolled as a full-time, part-time, or summer-school student in a program that terminates in an associate or a baccalaureate degree, a college credit certificate, or a career certificate;

(b) Physically resides in ~~Is currently, and was at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, a resident of~~ this state while enrolled in the university, institution, or center; and

(c) Submits to the ~~state~~ university, ~~the Florida College System~~ institution, or ~~the career~~ center ~~operated by a school district under s. 1001.44, or the charter technical career center~~ the DD-214 form issued at the time of separation from

service as documentation that the student has received a Purple Heart or another combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

Such a waiver for a Purple Heart recipient or recipient of another combat decoration superior in precedence shall be applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.

Section 3. Subsection (5) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(5) MASTERY OF SUBJECT AREA KNOWLEDGE.—Acceptable means of demonstrating mastery of subject area knowledge are:

(a) For a subject requiring only a baccalaureate degree for which a Florida subject area examination has been developed, achievement of a passing score on the Florida-developed subject area examination specified in state board rule;

(b) For a subject for which a Florida subject area examination has not been developed, achievement of a passing score on a standardized examination specified in state board rule, including, but not limited to, passing scores on both the oral proficiency and written proficiency examinations administered by the American Council on the Teaching of Foreign Languages;

(c) For a subject for which a Florida subject area

examination has not been developed or a standardized examination has not been specified in state board rule, completion of the subject area specialization requirements specified in state board rule and verification of the attainment of the essential subject matter competencies by the district school superintendent of the employing school district or chief administrative officer of the employing state-supported or private school;

(d) For a subject requiring a master's or higher degree, completion of the subject area specialization requirements specified in state board rule and achievement of a passing score on the Florida-developed subject area examination or a standardized examination specified in state board rule;

(e) Documentation of a valid professional standard teaching certificate issued by another state; ~~or~~

(f) Documentation of a valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education;

(g) Documentation of successful completion of a United States Defense Language Institute Foreign Language Center program; or

(h) Documentation of a passing score on the Defense Language Proficiency Test (DLPT).

School districts are encouraged to provide mechanisms for middle grades teachers holding only a K-6 teaching certificate to obtain a subject area coverage for middle grades through postsecondary coursework or district add-on certification.

Section 4. This act shall take effect July 1, 2016.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1686
INTRODUCER:	Health Policy Committee and Senators Bean and Joyner
SUBJECT:	Telehealth
DATE:	February 24, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1686 creates a Telehealth Task Force within the Agency for Health Care Administration (AHCA), authorizes health care practitioners in Florida to provide telehealth services, and defines telehealth.

The task force will be chaired by the Secretary of the AHCA or his or her designee. The other members of the task force will include the State Surgeon General, and 17 other members, including other health care practitioners, health care providers, telehealth services providers and sellers, and representatives of health care facilities.

The bill requires the task force to compile data and submit a report by June 30, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives, that analyzes:

- Frequency and extent of the use of telehealth nationally and in this state;
- Costs and cost savings associated with using telehealth;
- Types of telehealth services available;
- Extent of available health insurance coverage available for telehealth services; and
- Barriers to implementing the use of, using, or accessing telehealth services.

The bill requires the task force to hold its first meeting by September 1, 2016, and to meet as frequently as necessary to complete its work. The AHCA must support the task force within

existing resources; members of the task force will serve without compensation or per diem reimbursement. The section of law creating the task force sunsets December 1, 2017.

The bill has no direct fiscal impact but could result in cost-savings for the Medicaid program to an indeterminate extent.

The effective date of the bill is July 1, 2016.

II. Present Situation:

The term telehealth is sometimes used interchangeably with telemedicine. Telehealth, however, generally refers to a wider range of health care services that may or may not include clinical services.[1] Telehealth often collectively defines the telecommunications equipment and technology that is used to collect and transmit the data for a telemedicine consultation or evaluation.

The federal Centers for Medicare & Medicaid Services (CMS) defines telehealth as:

> The use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance. Telehealth includes such technologies such as telephones, facsimile machines, electronic mail systems, and remote patient monitoring devises which are used to collect and transmit data for monitoring and interpretation.[2]

Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided through telemedicine include:[3]

- Primary care and specialist referral services that involve a primary care or allied health professional providing consultation with a patient or specialist assisting the primary care physician with a diagnosis;
- Remote patient monitoring;
- Consumer medical and health information that offers consumers specialized health information and online discussion groups for peer-to-peer support; and
- Medical education that provides continuing medical education credits.

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[1] Anita Majerowicz and Susan Tracy, *"Telemedicine: Bridging Gaps in Healthcare Delivery,"* Journal of AHIMA 81, no. 5, (May 2010); 52-53, 56. http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_047324.hcsp?dDocName=bok1_047324 (last visited Jan. 14, 2016).

[2] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telemedicine*, http://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/telemedicine.html (last visited Jan. 14, 2016).

[3] American Telemedicine Association, *What is Telemedicine?* http://www.americantelemed.org/about-telemedicine/what-is-telemedicine#.Vpf-P03ot9A (last visited Jan. 14, 2016).

Board of Medicine Rulemaking

Florida's Board of Medicine (board) convened a Telemedicine Workgroup in 2013 to review its rules on telemedicine, which had not been amended since 2003. The 2003 rules focused on standards for the prescribing of medicine via the Internet. On March 12, 2014, the board's new Telemedicine Rule, 64B8-9.0141, became effective for Florida-licensed physicians. The new rule defined telemedicine, established standards of care, prohibited the prescription of controlled substances, permitted the establishment of a doctor-patient relationship via telemedicine, and exempted emergency medical services.[4]

Two months after the initial rule's implementation, the board proposed the development of a rule amendment to address concerns that the prohibition on physicians ordering controlled substances may also preclude physicians from prescribing controlled substances via telemedicine for hospitalized patients. The board indicated such a prohibition was not intended.[5] The amended rule took effect July 22, 2014.

Additional changes followed to clarify medical record requirements and the relationship between consulting or cross-coverage physicians. On December 18, 2015, the board published another proposed rule change to allow controlled substances to be prescribed through telemedicine for the limited treatment of psychiatric disorders.[6] The proposed rule amendment, Rule 64B8-9.0141-Standards for Telemedicine Practice, has been noticed by the Board of Medicine and if requested within 21 days of its first publication date in the Florida Administrative Registrar (FAR), a public hearing on the rule amendment, would be held on the rule and announced at a later date in the FAR. No public hearing notice has yet been published.

Telemedicine in Other States

As of May 2015, 24 states and the District of Columbia have mandated that private insurance plans cover telemedicine services at reimbursement rates equal to an in-person consultation.[7] Such laws require insurance companies and health plans to reimburse providers the same amount for the same visit regardless of whether the visit was conducted face-to-face or via electronic communications.

Forty-eight state Medicaid programs also reimburse for some form of telemedicine via live video.[8] A smaller number of states offer reimbursement for other types of telemedicine services, such as store-and-forward activities;[9] facility fees for hosting either the telemedicine provider,

[4] Rule 64B15-14.0081, F.A.C., also went into effect March 12, 2014 for osteopathic physicians.
[5] Florida Board of Medicine, *Latest News - Emergency Rule Related to Telemedicine,* http://flboardofmedicine.gov/latest-news/emergency-rule-related-to-telemedicine/ (last visited Jan. 14, 2016).
[6] Vol. 41/244, Fla. Admin. Weekly, Dec. 18, 2015, available at https://www.flrules.org/BigDoc/View_Section.asp?Issue=2011&Section=1 (last visited Feb. 8, 2016).
[7] American Telemedicine Association, *50 State Telemedicine Gaps Analysis: Coverage & Reimbursement*, p. 2, http://www.americantelemed.org/docs/default-source/policy/50-state-telemedicine-gaps-analysis---coverage-and-reimbursement.pdf (last visited Jan. 14, 2016).
[8] Id.
[9] Store and forward technology refers to the electronic transmission of medical information and data such as digital images, documents and pre-recorded images for review by a physician or specialist at a later date, not simultaneously with the patient.

patient, or both; and remote patient monitoring. Florida, Idaho, and Montana only provide reimbursement for physician services.[10]

Hospitals in rural counties have utilized telemedicine to provide specialty care in their emergency rooms and to avoid costly and time-consuming transfers of patients from smaller hospitals to the larger tertiary centers for care.

In a California project, rural hospital emergency rooms received video conference equipment to facilitate the telemedicine consultations. The rural hospital physicians and nurses were linked with pediatric critical care medicine specialists at the University of California, Davis.[11] As a *Futurity* article notes, "while 21 percent of children in the United States live in rural areas, only 3 percent of pediatric critical-care medicine specialists practice in such areas."[12]

Federal Provisions for Telemedicine

Federal laws and regulations address telemedicine from several angles, including prescriptions for controlled substances, hospital emergency room guidelines, and reimbursement rates for the Medicare program.

Prescribing Via the Internet

Federal law specifically prohibits the prescribing of controlled substances via the Internet without an in-person evaluation. Federal regulation 21 CFR §829 specifically states:

> No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.[13] However, the Ryan Haight Online Pharmacy Consumer Protection Act,[14] signed into law in October 2008, created an exception for the in-person medical evaluation for telemedicine practitioners. The practitioner is still subject to the requirement that all controlled substances be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April 2009, as required under the Haight Act.[15] The federal regulatory definition of telemedicine under the DEA includes, but is not limited to, the following elements:

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[10] *Supra* note 7.
[11] Futurity, *In Rural ERs, Kids Get Better Care with Telemedicine,* http://www.futurity.org/in-rural-ers-kids-get-better-care-with-telemedicine/ (last visited Jan. 14, 2016).
[12] Id.
[13] 21 CFR §829(e)(2).
[14] Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).
[15] Id., at sec. 3(j).

- The patient and practitioner are located in separate locations;
- Patient and practitioner communicate via a telecommunications system;
- The practitioner must meet other registration requirements for the dispensing of controlled substances via the Internet; and
- Certain practitioners (Department of Veterans Affairs' employees, for example) or practitioners in certain situations (public health emergencies) may be exempted from registration requirements.[16]

Medicare Coverage

Specific telehealth services delivered at designated sites are covered under Medicare. Regulations of federal CMS require both a distant site (location of physician delivering the service via telecommunications) and an originating site (location of the patient).

To qualify for Medicare reimbursement, the Medicare beneficiary must be located at an originating site that meets one of three qualifications. These three qualifications are:

- A rural health professional shortage area (HPSA) that is either outside a metropolitan statistical area (MSA) or in a rural census tract;
- A county outside of an MSA; or
- Participation in a federal telemedicine demonstration project approved by the Secretary of Health and Human Services as of December 31, 2000.[17]

Additionally, federal requirements provide that an originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A hospital;
- A critical access hospital (CAH);
- A rural health clinic;
- A federally qualified health center;
- A hospital-based or CAH-based renal dialysis center (including satellite offices);
- A skilled nursing facility; or
- A community mental health center.[18]

Under Medicare, distant site practitioners are limited, subject also to state law, to:

- Physicians;
- Nurse practitioners;
- Physician assistants;
- Nurse-midwives;
- Clinical nurse specialists;
- Certified registered nurse anesthetists;
- Clinical psychologists and clinical social workers; and

[16] 21 CFR §802(54).
[17] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services- Rural Health Fact Sheet* (Dec. 2014), http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf (last visited Jan. 20, 2016).
[18] *See* 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

- Registered dietitians and nutrition professionals.

For 2016, federal CMS added certified registered nurse anesthetists to the list of authorized distant site practitioners who can furnish telehealth services.[19]

For 2015, Medicare added new services under telehealth:
- Annual wellness visits;
- Psychoanalysis;
- Psychotherapy; and
- Prolonged evaluation and management services.[20]

For 2016, Medicare supplemented those services with end-stage renal disease services.[21]

Reimbursement for the distant site is established as "an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system."[22] Federal law also provides for a facility fee for the originating site of $20 through December 31, 2002, and then, by law, the facility fee is subsequently increased each year by the percentage increase in the Medicare Economic Index (MEI). For calendar year 2016, the originating fee for telehealth is 80 percent of the lesser of the actual charge or $25.10.[23]

Telemedicine Services in Florida

University of Miami

The University of Miami (UM) initiated telehealth services in 1973 and claims the first telehealth service in Florida, the first use of nurse practitioners in telemedicine in the nation, and the first telemedicine program in correctional facilities.[24] Today, UM has several initiatives in the area of telehealth, including:
- Tele-dermatology;
- Tele-trauma;
- Humanitarian and disaster response relief;
- School telehealth services; and
- Acute tele-neurology or tele-stroke.

While some of UM's activities reach its local community, others reach outside of Florida, including providing Haiti earthquake relief and tele-dermatology to cruise line employees.

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[19] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM9476* (Dec. 18, 2015), https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM9476.pdf (last visited Jan. 14, 2016).
[20] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM9034* (Dec. 24, 2014), http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM9034.pdf (last visited Jan. 20, 2016).
[21] *Supra*, Note 19.
[22] *See* 42 U.S.C. s. 1395(m)(m)(2)(A).
[23] *Supra* note *19*.
[24] University of Miami, Miller School of Medicine, *UM Telehealth - Our History*, http://telehealth.med.miami.edu/about-us/our-history (last visited Jan. 14, 2016).

Telehealth communications are also used for monitoring hospital patients and conducting training exercises.

Florida Medicaid Program

Florida's Medicaid program reimburses only physicians for telemedicine services when there is two-way, real-time interactive communication between a patient and a physician at a distant site.[25] Equipment is also required to meet specific technical safeguards under 45 CFR 164.312, where applicable, which require implementation of procedures for protection of health information, including unique user identifications, automatic log-offs, encryption, authentication of users, and transmission security. Telemedicine services must also comply with all other state and federal laws regarding patient privacy.

For Medicaid, the distant or hub site is where the consulting physician delivering the telemedicine service is located. The spoke site is the location of the Medicaid recipient at the time the service occurs. The spoke site does not receive any reimbursement unless the provider located at the spoke site performs a separate service for the Medicaid recipient on the same day as the telemedicine consultation. The telemedicine referral consultation requires the presence of the referring practitioner and the Medicaid recipient.[26]

Under Medicaid fee-for-service, Medicaid reimbursement for telemedicine services is limited to certain services and settings. The following services are currently covered:[27]

- Behavioral health services, including:
  - Tele-psychiatry services for psychiatric medication management by practitioners licensed under ch. 458 or 459, F.S.; and
  - Tele-behavioral health services for provision of individual and family behavioral health therapy services by qualified practitioners licensed under ch. 490 or 491, F.S.;
  - Dental services provided using video conferencing between a registered dental hygienist employed by and under contract with a Medicaid-enrolled group provider and supervising dentist, including oral prophylaxis, topical fluoride application, and oral hygiene instructions; and
- Physician services, including:
  - Services provided using audio and video equipment that allow for two-way, real-time, interactive communication between the physician and a patient;
  - Consultation services provided via telemedicine;
  - Interpretation of diagnostic testing results through telecommunications and information technology; and
  - Synchronous emergency services provided under parts III and IV of ch. 409, F.S., using an all-inclusive rate.

Medicaid does not reimburse for the following telemedicine services:

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[25] Agency for Health Care Administration, *Practitioner Services Handbook - Telemedicine Services* (April 2014) p. 136, *available at* http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/Practitioner%20Services%20Handbook_Adoption.pdf (last visited Jan. 14, 2016).

[26] Id at 137.

[27] Agency for Health Care Administration, *Senate Bill 478 Analysis* (Feb. 4, 2015) p. 3, (on file with the Senate Committee on Health Policy).

- Telephone conversations;
- Video cell phone conversations;
- Email messages;
- Facsimile transmission;
- Telecommunication with recipient at a location other than the spoke; and
- "Store and forward" consultations that are transmitted after the recipient or physician is no longer available.[28]

Medicaid also does not reimburse providers for the costs of any equipment related to telemedicine services.

Coverage of telemedicine services under Medicaid includes specific documentation requirements. The clinical record must include the following information:

- A brief explanation of why the services were not provided face-to-face;
- Documentation of telemedicine services provided, including the results of the assessment; and
- A signed statement from the recipient (parent or guardian, if a child) indicating his or her choice to receive services through telemedicine.[29]

Under the Managed Medical Assistance (MMA) component of Statewide Medicaid Managed Care, managed care plans may use telemedicine for behavioral health, dental services, and physician services.[30] The AHCA may also approve other telemedicine services provided by the managed care plans if approval is sought by those plans under the MMA component.

Child Protection Teams

The child protection team program (CPT) under the Department of Health's Children's Medical Services Network utilizes a telemedicine network to perform child assessments. The CPT is a medically-directed, multi-disciplinary program that works with local sheriff's offices and the Department of Children and Families in cases of child abuse and neglect to supplement investigative activities.[31] The CPT patient is seen at a remote site and a registered nurse assists with the medical exam. A physician or advanced registered nurse practitioner (ARNP) is located at the hub site and has responsibility for directing the exam.[32]

Hub sites are comprehensive medical facilities that include a wide range of medical and interdisciplinary staff, whereas the remote sites tend to be smaller facilities that may lack medical diversity.[33] Twenty-four hub sites throughout the state facilitate these child abuse

[28] Id.
[29] Id.
[30] Agency for Health Care Administration, *2012-2015 Medicaid Health Plan Model Agreement Attachment II - Exhibit II-A*, p. 63-64 http://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Attachment_II_Exhibit_II-A_MMA_Model_2014-01-31.pdf , (last visited Jan. 14, 2016).
[31] Florida Dep't of Health, *Child Protection Teams*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Jan. 14, 2016).
[32] Florida Dep't of Health, *Children Protection Team - Telemedicine Network* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/documents/cpt_telemedicine_fact_sheet.pdf (last visited Jan. 14, 2016).
[33] Id.

assessments and the evaluation of suspected cases of child abuse. The University of Florida Child Abuse Protection Team, for example, serves a 12-county area and, for the first six months of 2012, provided over 250 telemedicine examinations with medical community partners.[34]

Compliance with the Health Insurance Portability and Accountability Act (HIPAA)

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Privacy rules were initially issued in 2000 by the federal Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information and create standards for privacy rights. Additional privacy and security measures were adopted in 2009 with the Health Information Technology for Economic Clinical Health (HITECH) Act.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:
- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of the entities listed above.

While not a covered entity as an individual, the patient still maintains his or her privacy and confidentiality rights regardless of the method in which a medical service is delivered. The HITECH Act specifically identified telemedicine as an area for review and consideration, and funding was provided to, in part, strengthen infrastructure and tools to promote telemedicine.[35]

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in telemedicine is required to meet the same technical and physical HIPAA and HITECH requirements as would be required for a physical office visit. These requirements include ensuring that that the equipment and technology are HIPAA compliant.

Discount Medical Plans

Discount medical plans and discount medical plan organizations (DMPOs) are regulated by the Office of Insurance Regulation under part II of ch. 636, F.S. DMPOs offer a variety of health care services to consumers through discount medical plans at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members; instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a DMPO has a contract with a provider network under which the individual providers render the medical services at a discount.

[34] Sunshine Arnold and Debra Esernio-Jenssen, *Telemedicine: Reducing Trauma in Evaluating Abuse,* pp. 105-107, http://cdn.intechopen.com/pdfs-wm/41847.pdf (last visited Jan. 14, 2016).
[35] Public Law 111-5, s. 3002(b)(2)(C)(iii) and s. 3011(a)(4).

III. Effect of Proposed Changes:

Section 1 establishes the Telehealth Task Force as a new section of law in s. 408.61, F.S. The task force is created within the AHCA and the AHCA is directed to use existing resources to administer and support its activities.

Under the bill, task force members do not receive any compensation or reimbursement for per diem for travel expenses. Meetings may be held in person, by conference call, or other electronic means. The Secretary of the AHCA or his or her designee serves as the task force chair, and the state Surgeon General or his or her designee also serves, along with 17 other members. The Secretary of the AHCA appoints 10 members:

- Three representatives of hospitals or facilities licensed under chapter 395;
- Three representatives of health insurers that offer coverage of telehealth services;
- Two representatives of organizations that represent health care facilities; and
- Two representatives of entities that create or sell telehealth products.

The State Surgeon General appoints 7 members:

- Five health care practitioners, each of whom practices in a different area of medicine; and
- Two representatives of organizations that represent health care practitioners.

The bill requires the task force to compile data and submit a report by June 30, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives that analyzes:

- Frequency and extent of the use of telehealth nationally and in this state;
- Costs and cost savings associated with using telehealth technology and equipment;
- Types of telehealth services available;
- The extent of available health insurance coverage available for telehealth services, including:
  - A comparative analysis of such coverage to available coverage for in-person services;
  - A description of payment rates for such telehealth services and whether they are below, equal to, or above payment rates for in-person services;
  - Copayment, coinsurance, and deductible amounts; policy year, calendar year, lifetime, or other durational benefit limitations; and maximum benefits for telehealth and in-person services; and
  - Any unique conditions imposed as a prerequisite to obtaining coverage for telehealth services;
- Barriers to implementing the use of, using, or accessing telehealth services; and
- Consideration of opportunities for interstate cooperation in telehealth.

Under the bill, this section of law sunsets effective December 1, 2017.

Section 2 creates s. 456.51, F.S., relating to telehealth, which is applicable to healthcare practitioners generally. A health care practitioner[36] certified under part III of chapter 401,[37] or a person certified under part IV or V of chapter 468[38] who is practicing within the scope of his or her license or certification, may provide telehealth services.

Under the bill, a practitioner or person who provides telehealth services within the scope of his or her license, but is not a physician, will not be considered to be practicing medicine without a license.

"Telehealth" is specifically defined to mean:

> The use of synchronous or asynchronous telecommunications technology by a health care practitioner, a person certified under part III of chapter 401, or a person certified under part IV of chapter 468 to provide medical or other health care services, including, but not limited to, patient assessment, diagnosis, consultation, treatment, or remote monitoring; the transfer of medical or health data; patient and professional health-related education; the delivery of public health services; and health care administration functions.

Section 3 amends the definition of "discount medical plan" under s. 636.202(1), F.S., to provide that "discount medical plan" does not include any telehealth products defined under s. 456.51, F.S.

Section 4 provides that the act is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[36] The definition of a "health care practitioner" includes 26 different disciplines: Acupuncture, medical practice, osteopathic medicine, chiropractic medicine, podiatry, naturopathy, optometry, nursing, pharmacy, dentistry, midwifery, speech-language-pathology-audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, orthotics, prosthetics, and pedorthotics, electrolysis, massage, clinical laboratory personnel, medical physicists, dispensing of optical devices and hearing aids, physical therapy, psychological services, and clinical, counseling, and psychotherapy.

[37] Persons certified under chapter 301 are those employed in the emergency medical services field, including emergency medical technicians, paramedics, and registered nurses.

[38] Part IV of Chapter 468 are those individuals certified as radiological personnel, and Part V regulates respiratory therapists.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1686, Florida does not currently have a statutory definition for telehealth or telemedicine. Florida TaxWatch has opined in its report, *Moving Telehealth Forward: The High Costs of Paying Later*, that the lack of certainty in Florida around telehealth has led to confusion among providers on billing and payment options.[39] Florida TaxWatch estimated that with more timely access to care through telehealth, a one percent reduction in hospital charges alone could save $1 billion through hospitalization avoidance costs.[40]

The average estimated cost of a telehealth visit ranges from $40 to $50, compared to the average in-person visit of $136 to $176.[41] With an estimated savings of approximately $126 per telehealth visit, the report also showed that the participating vendor was able to resolve a patient's issue approximately 83 percent of the time.[42] When asked where the patient would have gone to receive care, or whether the patient would have received care at all, if not via telehealth, the most likely answer was urgent care (45.8 percent), physician office (30.9 percent), no care at all (12.3 percent), emergency room (5.6 percent), or other clinics (5.4 percent).[43] Other than receiving no care, all of these options would have cost more than the cost of the telehealth visit, ranging from the emergency room ($943 - $1,595) to other clinics ($57 - $83).[44]

C. Government Sector Impact:

The AHCA is required to use existing resources to support activities of the task force.

The Medicaid program may also be impacted with the definition of standard of care for telehealth to the extent that it may differ from the definition currently used by the program. Higher utilization of telehealth services may result in cost savings in other areas of the Medicaid program if the Florida Medicaid program experiences similar results as seen in other state Medicaid programs, such as New York, Texas, and California, where telehealth reimbursement parity is mandated.

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[39] Florida Tax Watch, *Moving Telehealth Forward: The High Costs of Paying Later*, p. 2, (August 2015). www.floridataxwatch.org.
[40] Id at 5.
[41] Dale H. Yamamoto, *Assessment of the Feasibility and Cost of Replacing In-Person Care with Acute Care Telehealth Services*, http://www.connectwithcare.org/wp-content/uploads/2014/12/Medicare-Acute-Care-Telehealth-Feasibility.pdf p. 2, (last visited Jan. 14, 2016).
[42] Id at 5.
[43] Id.
[44] Id at 6.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 408.61 and 456.51.

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 January 26, 2016:
The CS makes three modifications to the bill:

- Adds consideration of opportunities for interstate cooperation to the list of items to be reviewed and evaluated by the Telehealth Task Force;
- Includes respiratory therapists to the definition of a telehealth practitioner; and
- Modifies the definition of a "discount medical plan" under s. 636.202, F.S., to specifically exclude telehealth products defined under s. 456.51, F.S.

B. Amendments:

None.

419202

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment

Delete lines 34 - 90
and insert:
following 21 members:
(a) The Secretary of Health Care Administration or his or her designee, who shall serve as the chair of the task force.
(b) The State Surgeon General or his or her designee.
(c) Three representatives of hospitals or facilities licensed under chapter 395; three representatives of health

insurers that offer coverage of telehealth services; two representatives of organizations that represent health care facilities; two representatives of long-term care services, one from a nursing home and one from a home health agency or community-based health services setting; and two representatives of entities that create or sell telehealth products, all appointed by the Secretary of Health Care Administration.

(d) Five health care practitioners, each of whom practices in a different area of medicine, and two representatives of organizations that represent health care practitioners, all appointed by the State Surgeon General.

(3) The task force shall compile and analyze data and information on the following:

(a) The frequency and extent of the use of telehealth technology and equipment by health care practitioners and health care facilities nationally and in this state.

(b) The costs and cost savings associated with using telehealth technology and equipment.

(c) The types of telehealth services available.

(d) The extent of available health insurance coverage for telehealth services. The task force shall conduct a comparative analysis of such coverage to available coverage for in-person services. The analysis must include:

1. Covered medical or other health care services.

2. A description of payment rates for telehealth services and whether they are below, equal to, or above payment rates for in-person services.

3. Annual and lifetime dollar maximums on coverage for telehealth and in-person services.

4. Copayment, coinsurance, and deductible amounts; policy year, calendar year, lifetime, or other durational benefit limitations; and maximum benefits for telehealth and in-person services.

5. Any unique conditions imposed as a prerequisite to obtaining coverage for telehealth services.

(e) Barriers to implementing, using, or accessing telehealth services.

(f) Consideration of opportunities for interstate cooperation in telehealth.

(4) The task force shall convene its first meeting by September 1, 2016, and shall meet as often as necessary to fulfill its responsibilities under this section. Meetings may be conducted in person, by teleconference, or by other electronic means.

(5) The task force shall submit a report by June 30, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes its findings, conclusions, and recommendations.

(6) This section is repealed effective December 1, 2017.

Section 2. Section 456.51, Florida Statutes, is created to read:

456.51 Telehealth.—

(1) A health care practitioner, a behavior analyst certified under s. 393.17, a person certified under

By the Committee on Health Policy; and Senators Bean and Joyner

588-02606-16 20161686c1

A bill to be entitled

An act relating to telehealth; creating s. 408.61, F.S.; creating the Telehealth Task Force within the Agency for Health Care Administration; requiring the agency to use existing and available resources to administer and support the task force; providing for the membership of the task force; requiring the task force to compile and analyze certain data and to conduct a comparative analysis of health insurance coverage available for telehealth services and for in-person treatment; providing meeting requirements; requiring the task force to submit a report to the Governor and Legislature by a certain date; providing for the repeal of the section; creating s. 456.51, F.S.; authorizing certain licensed or certified health care professionals to provide telehealth services; defining the term "telehealth"; amending s. 636.202, F.S.; excluding telehealth products from the definition of "discount medical plan"; providing an effective date.

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

Section 1. Section 408.61, Florida Statutes, is created to read:

408.61 Telehealth Task Force.—

(1) The Telehealth Task Force is created within the agency. The agency shall use existing and available resources to administer and support the activities of the task force under this section.

(2) Members of the task force shall serve without compensation and are not entitled to reimbursement for per diem

588-02606-16 20161686c1

or travel expenses. The task force shall consist of the following 19 members:

(a) The Secretary of Health Care Administration or his or her designee, who shall serve as the chair of the task force.

(b) The State Surgeon General or his or her designee.

(c) Three representatives of hospitals or facilities licensed under chapter 395, three representatives of health insurers that offer coverage of telehealth services, two representatives of organizations that represent health care facilities, and two representatives of entities that create or sell telehealth products, all appointed by the Secretary of Health Care Administration.

(d) Five health care practitioners, each of whom practices in a different area of medicine, and two representatives of organizations that represent health care practitioners, all appointed by the State Surgeon General.

(3) The task force shall compile and analyze data and information on the following:

(a) The frequency and extent of the use of telehealth technology and equipment by health care practitioners and health care facilities nationally and in this state.

(b) The costs and cost savings associated with using telehealth technology and equipment.

(c) The types of telehealth services available.

(d) The extent of available health insurance coverage for telehealth services. The task force shall conduct a comparative analysis of such coverage to available coverage for in-person services. The analysis must include:

1. Covered medical or other health care services.

2. A description of payment rates for such telehealth services and whether they are below, equal to, or above payment rates for in-person services.

3. Annual and lifetime dollar maximums on coverage for telehealth and in-person services.

4. Copayment, coinsurance, and deductible amounts; policy year, calendar year, lifetime, or other durational benefit limitations; and maximum benefits for telehealth and in-person services.

5. Any unique conditions imposed as a prerequisite to obtaining coverage for telehealth services.

(e) Barriers to implementing the use of, using, or accessing telehealth services.

(f) Consideration of opportunities for interstate cooperation in telehealth.

(4) The task force shall convene its first meeting by September 1, 2016, and shall meet as often as necessary to fulfill its responsibilities under this section. Meetings may be conducted in person, by teleconference, or by other electronic means.

(5) The task force shall submit a report by June 30, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes its findings, conclusions, and recommendations.

(6) This section is repealed effective December 1, 2017.

Section 2. Section 456.51, Florida Statutes, is created to read:

456.51 Telehealth.—

(1) A health care practitioner, a person certified under

part III of chapter 401, or a person certified under part IV of chapter 468 who is practicing within the scope of his or her license or certification may provide telehealth services. A practitioner or person who is not a physician, but who provides telehealth services within the scope of his or her license or certification, may not be considered to be practicing medicine without a license.

(2) As used in this section, the term "telehealth" means the use of synchronous or asynchronous telecommunications technology by a health care practitioner, a person certified under part III of chapter 401, or a person certified under part IV or V of chapter 468 to provide medical or other health care services, including, but not limited to, patient assessment, diagnosis, consultation, treatment, or remote monitoring; the transfer of medical or health data; patient and professional health-related education; the delivery of public health services; and health care administration functions.

Section 3. Subsection (1) of section 636.202, Florida Statutes, is amended to read:

636.202 Definitions.—As used in this part, the term:

(1) "Discount medical plan" means a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. The term "discount medical plan" does not include any product regulated under chapter 627, chapter 641, or part I of this chapter, or any telehealth product defined under s. 456.51, F.S.

Section 4. This act shall take effect July 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 Appropriations

BILL:	PCS/CS/SB 1714
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senator Brandes
SUBJECT:	Competency-based Innovation Pilot Program
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1714 promotes competency-based student learning opportunities. Specifically, the bill defines competency-based education and:

- Establishes a competency-based innovation pilot program (pilot program) within the Department of Education for five years.
- Specifies pilot program related requirements.
- Authorizes waivers from certain requirements in State Board of Education rule.
- Requires students participating in the pilot program at participating schools to be reported for funding in accordance with current law.
- Specifies repeal of the pilot program effective June 30, 2021.

Public schools in Lake County, Pinellas County, Seminole County, Palm Beach County, the P.K. Yonge Developmental Research School, and school districts or charter schools designated by the Commissioner of Education may apply to the department for approval of their pilot program.

The bill has no impact on state funds. The program is voluntary and it is unknown if any school districts will participate. However, if a district chooses to participate, any fiscal impact would be absorbed within existing resources.

The bill takes effect July 1, 2016.

II. Present Situation:

The Florida Legislature has specified general powers and duties of the Commissioner of Education (commissioner) and the State Board of Education (SBE or state board), and the terms for student progression and award of credit.

Commissioner's Powers and Duties

The commissioner is the chief educational officer of the state and is responsible for assisting the SBE in enforcing compliance with the mission and goals of the K-20 education system except for the State University System.[1]

To facilitate innovative practices and to allow local selection of educational methods, the state board may authorize the commissioner to waive, upon request of a district school board, SBE rules regarding district school instruction and operations, except the rules that relate to civil rights, and student health, safety, and welfare.[2] The law prohibits the commissioner from granting waivers for certain specified provisions in rule (e.g., the allocation and appropriation of state and local funds for public education, graduation and state accountability standards, financial reporting requirements, public meetings, public records, and due process hearings governed by chapter 120).[3] Annually, by January 1, the commissioner must report to the Legislature and the state board all approved waiver requests from the preceding year.[4]

Student Progression

Regarding student progression, the Legislature intends that:[5]

- Each student's progression from one grade to another is determined, in part, upon satisfactory performance in English Language Arts (ELA), mathematics, science, and social studies.
- District school board policies facilitate student achievement.
- Each student and his or her parent be informed of the student's academic progress.
- Students have access to educational options that provide academically challenging coursework or accelerated instruction.[6]

Each district school board must establish a comprehensive plan for student progression which provides for a student's progression from one grade to another based on the student's mastery of ELA, mathematics, science, and social studies standards.[7]

[1] Section 1001.10(1), F.S.
[2] Section 1001.10(3), F.S.
[3] Section 1001.10(3), F.S.
[4] *Id*.
[5] Section 1008.25(1), F.S.
[6] The Legislature established the Academically Challenging Curriculum to Enhance Learning (ACCEL) options in 2012 to provide rigorous and accelerated instruction to eligible public school students in kindergarten through grade 12. Section 1002.3105(1)(a), F.S.
[7] Section 1008.25(2), F.S.; *see also* Rule 6A-1.09401(3), F.A.C.

Each student must participate in the statewide, standardized assessment program.[8] A student who does not score Level 3 or above on the statewide, standardized ELA assessment, statewide, standardized mathematics assessment, or the Algebra I end-of-course (EOC) assessment must be evaluated to determine the nature of student's difficulty, the areas of academic need, and strategies for providing supports to improve the student's performance.[9] The law specifies that a student must pass the grade 3 ELA assessment to be promoted to grade 4.[10] A student retained in grade 3 must be provided intensive reading interventions to ameliorate the student's specific reading deficiency, as identified by a valid and reliable diagnostic assessment.[11] The law also authorizes midyear promotion of a student who is retained in grade 3 to grade 4 after the student demonstrates ability to read and perform at or above grade level in ELA.[12]

Award of Credit

For the purposes of satisfying high school graduation requirements, one full credit means a minimum of 135 hours of bona fide instruction in a designated course of study that contains student performance standards, except as authorized under the Credit Acceleration Program (CAP).[13] The CAP is created for the purpose of allowing a student to earn high school credit in Algebra I, Algebra II, geometry, United States history, or biology if the student attains a passing score on the statewide, standardized EOC assessment, without enrolling in or completing the corresponding course.[14] In doing so, the Legislature has authorized the ability of students to earn credit by demonstrating subject area competency based on the students' performance on specified assessments without requiring the students to enroll in and complete the corresponding courses.

With regards to a school district that is authorized to implement block scheduling by the district school board, one full credit means a minimum of 120 hours of bona fide instruction in a designated course of study that contains student performance standards for fulfilling high school graduation requirements.[15] The state board must determine the number of postsecondary credit hours earned through dual enrollment and that equal one full credit of the equivalent high school course.[16]

[8] Section 1008.25(4)(a), F.S.
[9] *Id*.
[10] To be promoted to grade 4, a student must score at Level 2 or higher on the grade 3 ELA assessment. A student must be retained in grade 3 if the student does not score Level 2 or higher on the grade 3 ELA assessment. Section 1008.25(5)(b), F.S. Florida law authorizes seven good cause exemptions from mandatory retention in grade 3. Section 1008.25(6)(b), F.S.
[11] Section 1008.25(7)(a), F.S.
[12] Section 1008.25(7)(b)3., F.S.; *see also* Rule 6a-1.094222, F.A.C.
[13] Section 1003.436(1)(a), F.S. A "full-time equivalent student" is a student who receives instruction in a standard school, comprising not less than 900 net hours for a student in or at the grade level of 4 through 12, or not less than 720 net hours for a student in or at the grade level of kindergarten through grade 3 or in an authorized prekindergarten exceptional program. The definition of a "full-time equivalent student" also includes students who receive instruction in a double-session school or a school utilizing an experimental school calendar approved by the Department of Education, comprising not less than the equivalent of 810 net hours in grades 4 through 12 or not less than 630 net hours in kindergarten through grade 3. Section 1011.61(1)(a)1.-2., F.S.
[14] Section 1003.4295(3), F.S.
[15] Section 1003.436(1)(a), F.S.
[16] *Id*.

To award credit for high school graduation, each district school board must maintain a one-half credit earned system that includes courses provided on a full-year basis.[17] A student enrolled in a full-year course must receive one-half credit if the student successfully completes either the first half or the second half of a full-year course but fails to complete the other half of the course.[18]

III. Effect of Proposed Changes:

This bill promotes competency-based student learning opportunities. Specifically, the bill defines competency-based education and:

- Establishes a competency-based innovation pilot program (pilot program) within the Department of Education (DOE or department) for five years.
- Specifies pilot program related requirements.
- Authorizes waivers from certain requirements in State Board of Education (SBE or state board) rule.
- Requires students participating in the pilot program at participating schools to be reported for funding in accordance with current law.
- Specifies repeal of the pilot program effective June 30, 2021.

Public schools in Lake County, Pinellas County,[19] Seminole County, Palm Beach County, the P.K. Yonge Developmental Research School,[20] and school districts or charter schools designated by the Commissioner of Education (commissioner) may apply to the department for approval of their pilot program.

Definition

The bill defines "competency-based education" as "a system in which a student may advance to higher levels of learning after demonstrating a mastery of concepts and skills instead of after a specified timeframe." As a result, students will be able to demonstrate subject area and grade level competency through various methods such as performance on statewide, standardized assessments, without enrolling in and completing the corresponding courses.

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[17] Section 1003.436(2), F.S.

[18] *Id*.

[19] Lake and Pinellas County schools received the Next Generations Systems Initiative Grant award from the Bill and Melinda Gates Foundation to implement personalized learning in all schools in the County by specified timeframes. Lake County Schools, *What is the Next Generation Systems Initiative Grant?*, http://www.lake.k12.fl.us/Page/38471 (last visited Jan. 17, 2016) and Pinellas County Schools, *PCS Receives Funding for Personalized Learning Initiative*, http://newsroom.pcsb.org/pcs-receives-funding-for-personalized-learning-initiative/ (last visited Jan. 17, 2016); *see also* Gates Foundation, *Awarded Grants*, http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database#q/k=next%20generation%20systems%20initiative (last visited Jan. 18, 2016)..

[20] P.K. Yonge Developmental Research School is established as a developmental research school (lab school) pursuant to s. 1002.32(2), F.S., and is affiliated with the University of Florida, located in Gainesville, Florida. The mission of a lab school is to provide a vehicle for conducting research on and evaluation of management, teaching, and learning. The primary goal of a lab school is to enhance instruction and research in specialized subjects (e.g., mathematics, science, and computer science) by using resources available on a state university campus, while also providing an education in nonspecialized subjects. Section 1002.32(3), F.S.

Application Requirements

The bill specifies that the schools in the identified counties, P.K. Yonge Developmental Research School, and school districts or charter schools designated by the commissioner may submit their application on a form and by a date specified by the department. The application must include, at a minimum, the following pilot program-specific information:

- Vision and timeline, including the timeframe for districtwide implementation of competency-based education.
- Annual goals and performance outcomes that participating schools must meet (e.g., student performance,[21] promotion and retention rates, graduation rates, and indicators of college and career readiness).
- Communication plan for stakeholders, including businesses and community members.
- Scope of, and timeline for, professional development.
- Plan for:
  - Student progression based on mastery of skills, including the ways to determine the degree to which a student has attained mastery of concepts and skills.
  - Using technology and digital and blended learning to enhance student achievement and to facilitate competency-based education.
  - How resources will be allocated at the district- and school-level.
- Recruitment and selection of participating schools.
- Rules to be waived to implement the pilot program.

The application requirements affords program transparency and accountability by specifying the information that the authorized schools must submit to the department for approval of their pilot program, and the exemption from certain state board rules for the schools that the DOE approves to implement the pilot program.

Authorized Waivers

In addition to the state board's authority to allow the commissioner to waive, upon request of a district school board, certain SBE rules regarding district school instruction and operations, the bill authorizes the state board to allow the commissioner to grant additional waivers from state board rules related to student progression and award of credit. As a result, students will be able to earn credit by demonstrating subject area and grade level competency through performance on statewide, standardized assessments, without enrolling in and completing the corresponding courses. Currently, the Credit Acceleration Program (CAP) allows students to earn high school credit in Algebra I, Algebra II, geometry, United States history, or biology if the students attain a passing score on the statewide, standardized end-of-course (EOC) assessment, without enrolling in or completing the corresponding course.[22] The bill expands this mechanism for earning high school credit to include statewide, standardized comprehensive assessments for grades 9 and 10 English Language Arts (ELA).

[21] "Student performance," "student academic performance," or "academic performance" include, but is not limited to, student learning growth, achievement levels, and learning gains on statewide, standardized assessments. Section 1008.34(1)(c), F.S.
[22] Section 1003.4295(3), F.S.

Additionally, the bill allows waivers from state board rules to also apply to student progression decisions. As a result, a student may be promoted from one grade to the next grade level, by subject area, based on his or her performance on statewide, standardized comprehensive assessments for grades 3-10 ELA, grades 3-8 mathematics, and grades 5 and 8 science, without completing the corresponding course requirements. For instance, under the bill, a student in grade 3 may be promoted to grade 4 ELA if he or she demonstrates competency through performance on the grade 3 ELA assessment without completing the corresponding grade 3 ELA course requirements.

The bill provisions regarding waivers from student progression- and award of credit-related state board rules may also apply to the Civics EOC assessment and students with disabilities who take the Florida Alternate Assessment.

Funding

The bill requires students participating in the pilot program at participating schools to be reported for funding in accordance with current law.[23]

Department of Education Requirements

The bill requires the department to:
- Compile student and staff schedules before and after implementation of the pilot program.
- Provide access to the statewide, standardized comprehensive and EOC assessments.[24]
- Submit a report annually, by June 1, summarizing the activities and accomplishments of the pilot programs and recommendations for statutory revisions for statewide implementation to the Governor, President of the Senate, and the Speaker of the House of Representatives.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[23] Section 1011.62, F.S.

[24] Annually, the department publishes the Florida Statewide Assessment Program Schedule (assessment schedule). The assessment schedule specifies the dates for administering the statewide, standardized assessments during the Fall and Spring terms. Section 1008.22(3)(d) and (7), F.S.; *see also* Florida Department of Education, *Assessment Schedules*, http://www.fldoe.org/accountability/assessments/k-12-student-assessment/assessment-schedules.stml (last visited Jan. 17, 2016).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/CS/SB 1714 has no impact on state funds. The program is voluntary and it is unknown if any school districts will participate. However, if a district chooses to participate, any fiscal impact would be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Education on February 17, 2016:
The committee substitute includes Seminole County and Palm Beach County as eligible school districts to participate in the pilot program.

CS by Education Pre-K – 12 on January 20, 2016:
The committee substitute maintains the substance of SB 1714 with modifications by:

- Specifying that school districts or charter schools designated by the Commissioner of Education, in addition to the schools identified in SB 1714, may also apply to the Department of Education for approval of their pilot program.
- Requiring that students participating in the pilot program at participating schools be reported for funding in accordance with current law.

B. Amendments:

None

742326

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 41
and insert:
Section 1. Paragraph (e) of subsection (1) of section 1003.4156, Florida Statutes, is amended to read:
1003.4156 General requirements for middle grades promotion.—
(1) In order for a student to be promoted to high school from a school that includes middle grades 6, 7, and 8, the

student must successfully complete the following courses:

(e) One course in career and education planning to be completed in 6th, 7th, or 8th grade. The course may be taught by any member of the instructional staff. At a minimum, the course must be Internet-based, easy to use, and customizable to each student and include research-based assessments to assist students in determining educational and career options and goals. In addition, the course must result in a completed personalized academic and career plan for the student; must emphasize the importance of entrepreneurship skills; must emphasize technology or the application of technology in career fields; and, beginning in the 2014-2015 academic year, must include information from the Department of Economic Opportunity's economic security report as described in s. 445.07. The required personalized academic and career plan must inform students of high school graduation requirements, including a detailed explanation of the diploma designation options provided under s. 1003.4285; high school assessment and college entrance test requirements; Florida Bright Futures Scholarship Program requirements; state university and Florida College System institution admission requirements; available opportunities to earn college credit in high school, including Advanced Placement courses; the International Baccalaureate Program; the Advanced International Certificate of Education Program; dual enrollment, including career dual enrollment; and career education courses, including career-themed courses and courses that lead to industry certification pursuant to s. 1003.492 or s. 1008.44. The course in career and education planning required in this paragraph may include, or a school

742326

district may develop, grade level curricula or instruction that introduces students to various careers, but the course or school district must not require any curriculum, instruction, or employment-related activity that obligates an elementary or secondary student to involuntarily select a career, a career interest, an employment goal, or a related job training.

Each school must inform parents about the course curriculum and activities. Each student shall complete a personal education plan that must be signed by the student and the student's parent. The Department of Education shall develop course frameworks and professional development materials for the career and education planning course. The course may be implemented as a stand-alone course or integrated into another course or courses. The Commissioner of Education shall collect longitudinal high school course enrollment data by student ethnicity in order to analyze course-taking patterns.

Section 2. Competency-based innovation pilot program.—Beginning with the 2016-2017 school year, a competency-based innovation pilot program is established within the Department of Education.

(1) For the purposes of this section, the term "competency-based education" means a system in which a student may advance to higher levels of learning after demonstrating a mastery of concepts and skills instead of after a specified timeframe.

(2) Public schools in Lake, Palm Beach, Pinellas, and Seminole Counties; P.K. Yonge Developmental Research School; and school districts or charter schools designated by the Commissioner of Education may submit an application to the

742326

department for approval of a competency-based innovation pilot program. A school or school district may discontinue its participation in the pilot program at its discretion, or a student who participates in the pilot program may discontinue his or her participation in the program at the discretion of the student or the student's parent. The application for approval of a competency-based pilot program shall be submitted on a form provided and by a date specified by the department and must include, but need not be limited to, the following:

(a) A vision for the pilot program, including a timeline for the program.

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

And the title is amended as follows:

Delete lines 2 - 8

and insert:

An act relating to the competency-based education; amending s. 1003.4156, F.S.; authoring career and education planning courses to include, or school districts to develop, specified grade level curricula or instruction; prohibiting such courses or school districts from requiring certain curricula, instruction, or activities; establishing a competency-based innovation pilot program within the Department of Education; defining the term "competency-based education"; authorizing certain schools to apply to the department for approval of a competency-based innovation pilot program; specifying that participants may choose to discontinue their participation in the

742326

program; specifying information to be

258838

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (742326) (with title amendment)

Delete lines 18 - 19
and insert:
goals. In addition, the course must result in a completed tentative personalized academic and career plan for the student, which the student is in no way obligated to pursue; must

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

258838

And the title is amended as follows:

Delete line 86

and insert:

amending s. 1003.4156, F.S.; specifying that a student is not obligated to pursue the required personalized academic and career plan; authorizing career and

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to the competency-based innovation pilot program; establishing a competency-based innovation pilot program within the Department of Education; defining the term "competency-based education"; authorizing certain schools to apply to the department for approval of a competency-based innovation pilot program; specifying information to be included in the application; authorizing certain waivers; providing reporting and funding requirements for students participating in the pilot program at participating schools; requiring the department to compile certain information and provide access to statewide, standardized assessments; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; specifying the contents of the annual report; providing for expiration of the pilot program; providing an effective date.

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

Section 1. Competency-based innovation pilot program.—Beginning with the 2016-2017 school year, a competency-based innovation pilot program is established within the Department of Education.

(1) For the purposes of this section, the term "competency-

based education" means a system in which a student may advance to higher levels of learning after demonstrating a mastery of concepts and skills instead of after a specified timeframe.

(2) Public schools in Lake, Palm Beach, Pinellas, and Seminole Counties; P.K. Yonge Developmental Research School; and school districts or charter schools designated by the Commissioner of Education may submit an application to the department for approval of a competency-based innovation pilot program. The application shall be submitted on a form provided and by a date specified by the department and must include, but need not be limited to, the following:

(a) A vision for the pilot program, including a timeline for the program and the timeframe for districtwide implementation of competency-based education.

(b) Annual goals and performance outcomes that participating schools must meet, including, but not limited to:

1. Student performance, as defined in s. 1008.34, Florida Statutes.

2. Promotion and retention rates.

3. Graduation rates.

4. Indicators of college and career readiness.

(c) A communication plan for stakeholders, including businesses and community members.

(d) A scope of, and a timeline for, professional development.

(e) A plan for student progression based on mastery of concepts and skills, including proposed methods to determine the degree to which a student has attained mastery of concepts and skills.

576-03706-16

(f) A plan for using technology and digital and blended learning to enhance student achievement and to facilitate competency-based education.

(g) A plan for how resources will be allocated for the pilot program at both the district and school levels.

(h) The recruitment and selection of participating schools.

(i) Rules to be waived, as authorized in subsection (3), as necessary to implement the program.

(3) In addition to the waivers provided in s. 1001.10(3), Florida Statutes, the State Board of Education may authorize the Commissioner of Education to grant waivers relating to the awarding of credit and pupil progression.

(4) Students participating in the pilot program at participating schools shall be reported and generate funding consistent with the requirements of s. 1011.62, Florida Statutes.

(5) The department shall:

(a) Compile student and staff schedules before and after implementation of the pilot program.

(b) Provide access to statewide, standardized assessments pursuant to s. 1008.22(3), Florida Statutes.

(c) By June 1 of each year, provide a report summarizing the activities and accomplishments of the pilot programs and any recommendations for statutory revisions for statewide implementation to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(6) This section expires June 30, 2021.

Section 2. This act shall take effect July 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 Appropriations

BILL:	CS/SB 1714
INTRODUCER:	Education Pre-K - 12 Committee and Senator Brandes
SUBJECT:	Competency-based Innovation Pilot Program
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1714 promotes competency-based student learning opportunities. Specifically, the bill defines competency-based education and:

- Establishes a competency-based innovation pilot program (pilot program) within the Department of Education for five years.
- Specifies pilot program related requirements.
- Authorizes waivers from certain requirements in State Board of Education rule.
- Requires students participating in the pilot program at participating schools to be reported for funding in accordance with current law.
- Specifies repeal of the pilot program effective June 30, 2021.

Public schools in Lake and Pinellas Counties, the P.K. Yonge Developmental Research School, and school districts or charter schools designated by the Commissioner of Education may apply to the department for approval of their pilot program.

The bill has no impact on state funds. The program is voluntary and it is unknown if any school districts will participate. However, if a district chooses to participate, any fiscal impact would be absorbed within existing resources.

The bill takes effect July 1, 2016.

II. Present Situation:

The Florida Legislature has specified general powers and duties of the Commissioner of Education (commissioner) and the State Board of Education (SBE or state board), and the terms for student progression and award of credit.

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The commissioner is the chief educational officer of the state and is responsible for assisting the SBE in enforcing compliance with the mission and goals of the K-20 education system except for the State University System.[1]

To facilitate innovative practices and to allow local selection of educational methods, the state board may authorize the commissioner to waive, upon request of a district school board, SBE rules regarding district school instruction and operations, except the rules that relate to civil rights, and student health, safety, and welfare.[2] The law prohibits the commissioner from granting waivers for certain specified provisions in rule (e.g., the allocation and appropriation of state and local funds for public education, graduation and state accountability standards, financial reporting requirements, public meetings, public records, and due process hearings governed by chapter 120).[3] Annually, by January 1, the commissioner must report to the Legislature and the state board all approved waiver requests from the preceding year.[4]

Student Progression

Regarding student progression, the Legislature intends that:[5]

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- District school board policies facilitate student achievement.
- Each student and his or her parent be informed of the student's academic progress.
- Students have access to educational options that provide academically challenging coursework or accelerated instruction.[6]

Each district school board must establish a comprehensive plan for student progression which provides for a student's progression from one grade to another based on the student's mastery of ELA, mathematics, science, and social studies standards.[7]

[1] Section 1001.10(1), F.S.
[2] Section 1001.10(3), F.S.
[3] Section 1001.10(3), F.S.
[4] *Id*.
[5] Section 1008.25(1), F.S.
[6] The Legislature established the Academically Challenging Curriculum to Enhance Learning (ACCEL) options in 2012 to provide rigorous and accelerated instruction to eligible public school students in kindergarten through grade 12. Section 1002.3105(1)(a), F.S.
[7] Section 1008.25(2), F.S.; *see also* Rule 6A-1.09401(3), F.A.C.

Each student must participate in the statewide, standardized assessment program.[8] A student who does not score Level 3 or above on the statewide, standardized ELA assessment, statewide, standardized mathematics assessment, or the Algebra I end-of-course (EOC) assessment must be evaluated to determine the nature of student's difficulty, the areas of academic need, and strategies for providing supports to improve the student's performance.[9] The law specifies that a student must pass the grade 3 ELA assessment to be promoted to grade 4.[10] A student retained in grade 3 must be provided intensive reading interventions to ameliorate the student's specific reading deficiency, as identified by a valid and reliable diagnostic assessment.[11] The law also authorizes midyear promotion of a student who is retained in grade 3 to grade 4 after the student demonstrates ability to read and perform at or above grade level in ELA.[12]

Award of Credit

For the purposes of satisfying high school graduation requirements, one full credit means a minimum of 135 hours of bona fide instruction in a designated course of study that contains student performance standards, except as authorized under the Credit Acceleration Program (CAP).[13] The CAP is created for the purpose of allowing a student to earn high school credit in Algebra I, Algebra II, geometry, United States history, or biology if the student attains a passing score on the statewide, standardized EOC assessment, without enrolling in or completing the corresponding course.[14] In doing so, the Legislature has authorized the ability of students to earn credit by demonstrating subject area competency based on the students' performance on specified assessments without requiring the students to enroll in and complete the corresponding courses.

With regards to a school district that is authorized to implement block scheduling by the district school board, one full credit means a minimum of 120 hours of bona fide instruction in a designated course of study that contains student performance standards for fulfilling high school graduation requirements.[15] The state board must determine the number of postsecondary credit hours earned through dual enrollment and that equal one full credit of the equivalent high school course.[16]

[8] Section 1008.25(4)(a), F.S.
[9] *Id*.
[10] To be promoted to grade 4, a student must score at Level 2 or higher on the grade 3 ELA assessment. A student must be retained in grade 3 if the student does not score Level 2 or higher on the grade 3 ELA assessment. Section 1008.25(5)(b), F.S. Florida law authorizes seven good cause exemptions from mandatory retention in grade 3. Section 1008.25(6)(b), F.S.
[11] Section 1008.25(7)(a), F.S.
[12] Section 1008.25(7)(b)3., F.S.; *see also* Rule 6a-1.094222, F.A.C.
[13] Section 1003.436(1)(a), F.S. A "full-time equivalent student" is a student who receives instruction in a standard school, comprising not less than 900 net hours for a student in or at the grade level of 4 through 12, or not less than 720 net hours for a student in or at the grade level of kindergarten through grade 3 or in an authorized prekindergarten exceptional program. The definition of a "full-time equivalent student" also includes students who receive instruction in a double-session school or a school utilizing an experimental school calendar approved by the Department of Education, comprising not less than the equivalent of 810 net hours in grades 4 through 12 or not less than 630 net hours in kindergarten through grade 3. Section 1011.61(1)(a)1.-2., F.S.
[14] Section 1003.4295(3), F.S.
[15] Section 1003.436(1)(a), F.S.
[16] *Id*.

To award credit for high school graduation, each district school board must maintain a one-half credit earned system that includes courses provided on a full-year basis.[17] A student enrolled in a full-year course must receive one-half credit if the student successfully completes either the first half or the second half of a full-year course but fails to complete the other half of the course.[18]

III. Effect of Proposed Changes:

This bill promotes competency-based student learning opportunities. Specifically, the bill defines competency-based education and:

- Establishes a competency-based innovation pilot program (pilot program) within the Department of Education (DOE or department) for five years.
- Specifies pilot program related requirements.
- Authorizes waivers from certain requirements in State Board of Education (SBE or state board) rule.
- Requires students participating in the pilot program at participating schools to be reported for funding in accordance with current law.
- Specifies repeal of the pilot program effective June 30, 2021.

Public schools in Lake and Pinellas Counties,[19] the P.K. Yonge Developmental Research School,[20] and school districts or charter schools designated by the Commissioner of Education (commissioner) may apply to the department for approval of their pilot program.

Definition

The bill defines "competency-based education" as "a system in which a student may advance to higher levels of learning after demonstrating a mastery of concepts and skills instead of after a specified timeframe." As a result, students will be able to demonstrate subject area and grade level competency through various methods such as performance on statewide, standardized assessments, without enrolling in and completing the corresponding courses.

Application Requirements

The bill specifies that the schools in the identified Counties (Lake and Pinellas), P.K. Yonge Developmental Research School, and school districts or charter schools designated by the

[17] Section 1003.436(2), F.S.
[18] *Id*.
[19] Lake and Pinellas County schools received the Next Generations Systems Initiative Grant award from the Bill and Melinda Gates Foundation to implement personalized learning in all schools in the County by specified timeframes. Lake County Schools, *What is the Next Generation Systems Initiative Grant?*, http://www.lake.k12.fl.us/Page/38471 (last visited Jan. 17, 2016) and Pinellas County Schools, *PCS Receives Funding for Personalized Learning Initiative*, http://newsroom.pcsb.org/pcs-receives-funding-for-personalized-learning-initiative/ (last visited Jan. 17, 2016); *see also* Gates Foundation, *Awarded Grants*, http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database#q/k=next%20generation%20systems%20initiative (last visited Jan. 18, 2016)..
[20] P.K. Yonge Developmental Research School is established as a developmental research school (lab school) pursuant to s. 1002.32(2), F.S., and is affiliated with the University of Florida, located in Gainesville, Florida. The mission of a lab school is to provide a vehicle for conducting research on and evaluation of management, teaching, and learning. The primary goal of a lab school is to enhance instruction and research in specialized subjects (e.g., mathematics, science, and computer science) by using resources available on a state university campus, while also providing an education in nonspecialized subjects. Section 1002.32(3), F.S.

commissioner may submit their application on a form and by a date specified by the department. The application must include, at a minimum, the following pilot program-specific information:

- Vision and timeline, including the timeframe for districtwide implementation of competency-based education.
- Annual goals and performance outcomes that participating schools must meet (e.g., student performance,[21] promotion and retention rates, graduation rates, and indicators of college and career readiness).
- Communication plan for stakeholders, including businesses and community members.
- Scope of, and timeline for, professional development.
- Plan for:
  - Student progression based on mastery of skills, including the ways to determine the degree to which a student has attained mastery of concepts and skills.
  - Using technology and digital and blended learning to enhance student achievement and to facilitate competency-based education.
  - How resources will be allocated at the district- and school-level.
- Recruitment and selection of participating schools.
- Rules to be waived to implement the pilot program.

The application requirements affords program transparency and accountability by specifying the information that the authorized schools must submit to the department for approval of their pilot program, and the exemption from certain state board rules for the schools that the DOE approves to implement the pilot program.

Authorized Waivers

In addition to the state board's authority to allow the commissioner to waive, upon request of a district school board, certain SBE rules regarding district school instruction and operations, the bill authorizes the state board to allow the commissioner to grant additional waivers from state board rules related to student progression and award of credit. As a result, students will be able to earn credit by demonstrating subject area and grade level competency through performance on statewide, standardized assessments, without enrolling in and completing the corresponding courses. Currently, the Credit Acceleration Program (CAP) allows students to earn high school credit in Algebra I, Algebra II, geometry, United States history, or biology if the students attain a passing score on the statewide, standardized end-of-course (EOC) assessment, without enrolling in or completing the corresponding course.[22] The bill expands this mechanism for earning high school credit to include statewide, standardized comprehensive assessments for grades 9 and 10 English Language Arts (ELA).

Additionally, the bill allows waivers from state board rules to also apply to student progression decisions. As a result, a student may be promoted from one grade to the next grade level, by subject area, based on his or her performance on statewide, standardized comprehensive assessments for grades 3-10 ELA, grades 3-8 mathematics, and grades 5 and 8 science, without completing the corresponding course requirements. For instance, under the bill, a student in

[21] "Student performance," "student academic performance," or "academic performance" include, but is not limited to, student learning growth, achievement levels, and learning gains on statewide, standardized assessments. Section 1008.34(1)(c), F.S.
[22] Section 1003.4295(3), F.S.

grade 3 may be promoted to grade 4 ELA if he or she demonstrates competency through performance on the grade 3 ELA assessment without completing the corresponding grade 3 ELA course requirements.

The bill provisions regarding waivers from student progression- and award of credit-related state board rules may also apply to the Civics EOC assessment and students with disabilities who take the Florida Alternate Assessment.

Funding

The bill requires students participating in the pilot program at participating schools to be reported for funding in accordance with current law.[23]

Department of Education Requirements

The bill requires the department to:

- Compile student and staff schedules before and after implementation of the pilot program.
- Provide access to the statewide, standardized comprehensive and EOC assessments.[24]
- Submit a report annually, by June 1, summarizing the activities and accomplishments of the pilot programs and recommendations for statutory revisions for statewide implementation to the Governor, President of the Senate, and the Speaker of the House of Representatives.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[23] Section 1011.62, F.S.

[24] Annually, the department publishes the Florida Statewide Assessment Program Schedule (assessment schedule). The assessment schedule specifies the dates for administering the statewide, standardized assessments during the Fall and Spring terms. Section 1008.22(3)(d) and (7), F.S.; *see also* Florida Department of Education, *Assessment Schedules*, http://www.fldoe.org/accountability/assessments/k-12-student-assessment/assessment-schedules.stml (last visited Jan. 17, 2016).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1714 has no impact on state funds. The program is voluntary and it is unknown if any school districts will participate. However, if a district chooses to participate, any fiscal impact would be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

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

CS by Education Pre-K – 12 on January 20, 2016:
The committee substitute maintains the substance of SB 1714 with modifications by:

- Specifying that school districts or charter schools designated by the Commissioner of Education, in addition to the schools identified in SB 1714, may also apply to the Department of Education for approval of their pilot program.
- Requiring that students participating in the pilot program at participating schools be reported for funding in accordance with current law.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senator Brandes

581-02362-16 20161714c1

A bill to be entitled

An act relating to the competency-based innovation pilot program; establishing a competency-based innovation pilot program within the Department of Education; defining the term "competency-based education"; authorizing certain schools to apply to the department for approval of a competency-based innovation pilot program; specifying information to be included in the application; authorizing certain waivers; providing reporting and funding requirements for students participating in the pilot program at participating schools; requiring the department to compile certain information and provide access to statewide, standardized assessments; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; specifying the contents of the annual report; providing for expiration of the pilot program; providing an effective date.

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

Section 1. Competency-based innovation pilot program.—Beginning with the 2016-2017 school year, a competency-based innovation pilot program is established within the Department of Education.

(1) For the purposes of this section, the term "competency-based education" means a system in which a student may advance to higher levels of learning after demonstrating a mastery of concepts and skills instead of after a specified timeframe.

(2) Public schools in Lake and Pinellas Counties, P.K. Yonge Developmental Research School, and school districts or

581-02362-16 20161714c1

charter schools designated by the Commissioner of Education may submit an application to the department for approval of a competency-based innovation pilot program. The application shall be submitted on a form provided and by a date specified by the department and must include, but need not be limited to, the following:

(a) A vision for the pilot program, including a timeline for the program and the timeframe for districtwide implementation of competency-based education.

(b) Annual goals and performance outcomes that participating schools must meet, including, but not limited to:

1. Student performance, as defined in s. 1008.34, Florida Statutes.

2. Promotion and retention rates.

3. Graduation rates.

4. Indicators of college and career readiness.

(c) A communication plan for stakeholders, including businesses and community members.

(d) A scope of, and a timeline for, professional development.

(e) A plan for student progression based on mastery of concepts and skills, including proposed methods to determine the degree to which a student has attained mastery of concepts and skills.

(f) A plan for using technology and digital and blended learning to enhance student achievement and to facilitate competency-based education.

(g) A plan for how resources will be allocated for the pilot program at both the district and school levels.

(h) The recruitment and selection of participating schools.

(i) Rules to be waived, as authorized in subsection (3), as necessary to implement the program.

(3) In addition to the waivers provided in s. 1001.10(3), Florida Statutes, the State Board of Education may authorize the Commissioner of Education to grant waivers relating to the awarding of credit and pupil progression.

(4) Students participating in the pilot program at participating schools shall be reported and generate funding consistent with the requirements of s. 1011.62, Florida Statutes.

(5) The department shall:

(a) Compile student and staff schedules before and after implementation of the pilot program.

(b) Provide access to statewide, standardized assessments pursuant to s. 1008.22(3), Florida Statutes.

(c) By June 1 of each year, provide a report summarizing the activities and accomplishments of the pilot programs and any recommendations for statutory revisions for statewide implementation to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(6) This section expires June 30, 2021.

Section 2. This act shall take effect July 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 Committee Code Not Found

BILL:	SB 7068
INTRODUCER:	Criminal Justice Committee
SUBJECT:	Sentencing for Capital Felonies
DATE:	February 24, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Cellon	Cannon		**CJ Submitted as Committee Bill**
1.	Clodfelter	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 7068 makes changes to Florida's capital sentencing scheme.

On January 12, 2016, the U.S. Supreme Court held Florida's capital sentencing scheme unconstitutional in an eight to one opinion.[1] The Court ruled that "the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death."[2] Several provisions contained within the bill are intended to comply with the U.S. Supreme Court ruling.

Specifically, the bill amends Florida's capital sentencing scheme in the following ways:

- The prosecutor is required to provide notice to the defendant and file notice with the court when the state is seeking the death penalty and the notice must contain a list of the aggravating factors the state intends to prove;
- The jury is required to identify each aggravating factor found to exist by a unanimous vote in order for a defendant to be eligible for a sentence of death;
- The jury is required to determine whether the aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation;
- The jury is required to render a unanimous verdict in recommending a sentence of death;
- The jury is required to recommend a sentence of life imprisonment without the possibility of parole if the recommendation for a death sentence was less than unanimous;
- The judge is permitted to impose a sentence of life imprisonment without the possibility of parole when the jury unanimously recommends a sentence of death; and
- The judge is no longer permitted to "override" the jury's recommendation of a sentence of life imprisonment by imposing a sentence of death.

[1] *Hurst v. Florida*, 577 U.S. _____ (2016), 2016 WL 112683, at *3 (2016).
[2] *Id.* at *1.

Increased litigation is expected to result from the *Hurst* decision[3], and it is likely that the application of the bill's amendments to the death penalty sentencing scheme will be the subject of litigation. However, it is not expected that there will be a significant increase in costs associated with the bill itself.

The bill is effective upon becoming a law and the amendments made by the bill only apply to criminal acts that occur on or after the effective date.

II. Present Situation:

Florida's Capital Sentencing Law

Notice of Intent to Seek the Death Penalty

The Florida Rules of Criminal Procedure require the state to give notice to the defendant of its intent to seek the death penalty.

> Notice of Intent to Seek Death Penalty. The provisions of this rule apply only in those capital cases in which the state gives written notice of its intent to seek the death penalty within 45 days from the date of arraignment. Failure to give timely written notice under this subdivision does not preclude the state from seeking the death penalty. Fla. R. Crim. P. 3.202(a).

The rule does not require that any further information be conveyed in the notice, however Florida has broad pretrial discovery and should the defendant elect to participate in the discovery process the state's evidence against him or her will become known during the discovery process.

There is no statutory requirement that the aggravating factors upon which the state intends to rely in seeking death be enumerated before the state's evidence is presented at trial or the sentencing phase.

The Florida Supreme Court has not required the state to divulge the aggravating factors upon which it will rely in seeking the death penalty.[4] However, acknowledging the trial court's discretion, the Court has held that "a trial court does not depart from the essential requirements of law by requiring the State to provide pre-penalty phase notice of aggravating factors."[5]

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[3] *Id.*

[4] "We have consistently held that because Florida's death penalty statute limits aggravating factors to those listed ... there is no reason to require the state to notify defendants of the aggravating factors that the state intends to prove." *Hitchcock v. State*, 413 So.2d 741, 746 (Fla.1982) (citation omitted); *see also Kormondy v. State*, 845 So.2d 41, 54 (Fla.2003); *Lynch v. State*, 841 So.2d 362, 378 (Fla.2003); *Cox v. State*, 819 So.2d 705, 725 (Fla.2002); *Vining v. State*, 637 So.2d 921, 927 (Fla.1994).

[5] *State v. Steele*, 921 So.2d 538, 542-544 (Fla. 2005).

The Jury's Role in Sentencing

In Florida, after a guilty verdict in a capital case, the jury issues a sentencing recommendation – death or life imprisonment – unless the jury is waived.[6] During the sentencing phase the jury hears evidence to establish statutory aggravating factors and statutory or nonstatutory mitigating circumstances.[7] The aggravating factors must be established beyond a reasonable doubt.[8] The fact-finder must only be convinced by the greater weight of the evidence (a lower standard of proof than beyond a reasonable doubt) as to the existence of mitigating factors.[9]

If the jury finds one or more aggravating circumstances and determines that these circumstances are sufficient to recommend the death penalty, it must determine whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances. Based upon these considerations, the jury must recommend whether the defendant should be sentenced to life imprisonment or death.[10] However, even if the aggravating circumstances are found to outweigh the mitigating circumstances, the jury is never required to return a recommendation for death and must be so instructed.[11]

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[6] With the issue of guilt or innocence disposed of, the jury can then view the question of penalty as a separate and distinct issue. The fact that the defendant has committed the crime no longer determines automatically that he must die in the absence of a mercy recommendation. They must consider from the facts presented to them-facts in addition to those necessary to prove the commission of the crime-whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty. *State v. Dixon*, 283 So.2d 1(Fla. 1973).

[7] "An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim." *Fla. Standard Jury Instructions, Criminal Cases,* Penalty Proceedings Capital Cases, Instr. 7.11.

[8] "An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven." **…** "If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole." *Id*.

[9] "Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed." *Id*.

[10] "The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor." *Id.*

[11] "The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death." *Id*.

A simple majority of the jury is necessary for recommendation of the death penalty. It is not necessary for the jury to list on the verdict the aggravating and mitigating circumstances it finds or to disclose the number of jurors making such findings.[12]

The aggravating and mitigating circumstances and the method by which they must be determined to apply for sentencing are set forth in s. 921.141, F.S., as follows:

> (2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:
> (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
> (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
> (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.
> (3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:
> (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
> (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.
> In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.
> (5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:
> (a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

[12] "If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be:
A majority of the jury by a vote of _____ to _____ advise and recommend to the court that it impose the death penalty upon (defendant).
On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:
The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole." *Id*.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
(c) The defendant knowingly created a great risk of death to many persons.
(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
(f) The capital felony was committed for pecuniary gain.
(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
(h) The capital felony was especially heinous, atrocious, or cruel.
(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
(l) The victim of the capital felony was a person less than 12 years of age.
(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.
(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.
(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.
(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:
(a) The defendant has no significant history of prior criminal activity.
(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
(c) The victim was a participant in the defendant's conduct or consented to the act.

> (d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
> (e) The defendant acted under extreme duress or under the substantial domination of another person.
> (f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
> (g) The age of the defendant at the time of the crime.
> (h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.[13]

Judicial Determination of Sentence

After receiving the jury's recommendation the judge must then decide the appropriate sentence.[14] The judge weighs the jury's recommendation and conducts his or her own analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge's decision-making process on the sentence handed down.[15] The judge may sentence a defendant in a different manner than the jury recommends – this is known as an "override."

Records suggest that no Florida judge has overridden a jury's verdict of a life sentence since 1999. According to U.S. Supreme Court Justice Sotomayor's opinion dissenting from the Court's denial of certiorari review in the Alabama death penalty case of *Woodward v. Alabama*:

> Even after this Court upheld Florida's capital sentencing scheme in *Spaziano* v. *Florida*, 468 U. S. 447 (1984), the practice of judicial overrides consistently declined in that State. Since 1972, 166 death sentences have been imposed in Florida following a jury recommendation of life imprisonment. Between 1973 and 1989, an average of eight people was sentenced to death on an override each year. That average number dropped by 50 percent between 1990 and 1994, and by an additional 70 percent from 1995 to 1999. The practice then stopped completely. It has been more than 14 years since the last life-to-death override in Florida; the last person sentenced to death after a jury recommendation of life imprisonment was Jeffrey Weaver, sentenced in August 1999.[16]

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[13] Aggravating and mitigating circumstances also appear in s. 921.142, F.S., which applies to Capital Drug Trafficking Felonies. Section 921.142, F.S., is also amended by this bill.
[14] "The punishment for this crime is either death or life imprisonment without the possibility of parole. The final decision as to which punishment shall be imposed rests with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to which punishment should be imposed upon the defendant." *Fla. Standard Jury Instructions, Criminal Cases*, Penalty Proceedings Capital Cases, Instr. 7.11.
[15] What is referred to as the *Tedder "Great Weight" Standard* was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the court determined that "[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ."
[16] 571 U.S. ____ (2013), in which Justice Breyer joined this part of the dissent.

The Sixth Amendment, *Ring*, and *Hurst*

The Sixth Amendment of the U.S. Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ."[17] This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt.[18]

Applying this right, the U.S. Supreme Court held in 2000 that any facts increasing the penalty for a defendant must be submitted to a jury and proved beyond a reasonable doubt.[19]

Two years later, the Court in *Ring v. Arizona*, applied this right to Arizona's capital sentencing scheme, which required a judge to determine the presence of aggravating and mitigating factors and to only sentence a defendant to death if the judge found at least one aggravating factor.[20] The Court struck the sentencing scheme down, finding it to be a violation of the Sixth Amendment because it permitted sentencing judges, without a jury, to find aggravating circumstances justifying imposition of the death penalty.[21] This ruling was subsequently held to not apply retroactively to cases already final on direct review.[22]

Hurst v. Florida

Until the U.S. Supreme Court issued its opinion in *Hurst v. Florida*[23] on January 12, 2016, Florida's capital sentencing scheme has withstood challenges based on the 8th, 14th, and 6th Amendments.[24]

In this case, Timothy Lee Hurst was convicted of first-degree murder for fatally stabbing his co-worker in 1998 with a box cutter.[25] A jury recommended a sentence of death by a seven-to-five vote; thereafter, the trial court entered a sentence of death.[26] Hurst challenged his sentence arguing that the jury was required to find specific aggravators and to issue a unanimous advisory sentence recommendation.[27] The Florida Supreme Court denied Hurst's claims that his sentence violated *Ring* by adhering to Florida's precedent of not adopting *Ring* and citing to the Eleventh Circuit's recent approval of the capital sentencing scheme.[28] Hurst appealed this denial to the U.S. Supreme Court arguing that Florida's capital sentencing scheme violated *Ring* because the

[17] U.S. CONST. Amend. VI.
[18] *United States v. Gaudin*, 515 U.S. 506, 510 (1995).
[19] *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).
[20] *Ring v. Arizona*, 536 U.S. 584, 592 (2002).
[21] *Id*. at 609.
[22] *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004).
[23] 577 U.S. ____ (2016).
[24] Cruel or unusual punishment, due process and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).
[25] *Hurst v. State*, 147 So. 3d 435, 437 (Fla. 2014), *rev'd and remanded*, No. 14-7505, 2016 WL 112683 (U.S. Jan. 12, 2016).
[26] *Id*. at 440.
[27] *Id*. at 446.
[28] *Id*. at 446-447. *See Evans v. Secretary, Fla. Dep't of Corrections*, 699 F.3d 1249(11th Cir. 2012), *cert. denied*, 133 S.Ct. 2393 (2013)(Citing *Hildwin v. Florida*, 490 U.S. 638 (1989), where the United States Supreme Court upheld Florida's capital sentencing scheme thirteen years before *Ring*).

jury recommends the sentence with only a simple majority, the judge finds the facts necessary for imposition of the death penalty, and the judge imposes the death penalty.[29]

On January 12, 2016, the U.S. Supreme Court held Florida's capital sentencing scheme unconstitutional in an eight-to-one opinion.[30] The Court ruled that *"the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death."*[31]

The Court compared Florida's sentencing scheme to Arizona's in *Ring* and found Florida's distinctive factor of the advisory jury verdict immaterial. Like the unconstitutional practice in *Ring*, the judge in *Hurst* performed her own fact finding and increased *Hurst's* authorized punishment, thereby violating the Sixth Amendment.[32] The Court also expressly overruled its past decisions upholding Florida's capital sentencing scheme which were issued prior to *Ring*.[33]

The Court's opinion did not address Hurst's contention that a jury's advisory verdict must be greater than a simple majority in order to comport with the Sixth and Eighth Amendments. Neither the U.S. Supreme Court nor the Florida Supreme Court has required unanimity in a jury's capital sentencing recommendation. Alabama's capital sentencing scheme allows the imposition of the death penalty with a 10-2 jury sentencing recommendation.[34] Delaware requires unanimity regarding the finding of aggravating factors, but does not require unanimity in a sentencing recommendation.[35]

Current Effect of Hurst

The *Apprendi/Ring/Hurst* Sixth Amendment issue has been preserved and raised on appeal in Florida death sentence cases since the *Apprendi* decision was issued by the U.S. Supreme Court in 2000. The Florida Supreme Court denied claims based on *Apprendi* and *Ring* over the last 15 years, finding that Florida's sentencing scheme in death cases had not been found to be constitutionally lacking by the U.S. Supreme Court and was therefore a valid sentencing scheme.[36]

The Florida Supreme Court must now decide how *Hurst* applies to death cases that have moved from the trial stage to the direct and collateral appeal process. The Court heard oral argument on February 2, 2016 in an active death warrant case, *Lambrix v. Florida*.[37] The Court had specifically required briefing in the case on the *Hurst* issue. After oral arguments the Court stayed the impending execution. It cannot be known when the Court will issue its ruling in the

[29] Brief for Petitioner at 17-52 *Hurst v. Florida*, 2016 WL 112683 (2016) (No. 14-7505), 2015 WL 3542784.
[30] *Hurst v. Florida*, 577 U.S. _____ (2016), 2016 WL 112683, at *3 (2016).
[31] *Id.* at *1.
[32] *Id*. at *6.
[33] *Id*. at *7.
[34] ALA. CODE § 13A-5-46(f)("The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors.). *See also Gobble v. State*, 104 So. 3d 920, 977 (Ala. Crim. App. 2010)("*Ring* does not require a unanimous recommendation for the death penalty before a defendant may be sentenced to death.").
[35] DEL. CODE ANN. tit. 11, § 4209.
[36] *See* Porter v. Crosby, 840 So.2d 981 (Fla. 2003); Hurst v. State, 819 So.2d 689 (Fla. 2002); Mills v. Moore, 786 So.2d 532, 536-37 (Fla. 2001); Bottoson v. Moore, 833 So.2d 693 (Fla. 2002); King v. Moore, 831 So.2d 143 (Fla.2002).
[37] *Lambrix v. Florida*, Case No. SC16-8 & SC 16-56, Order Jan. 15, 2016 (available at https://efactssc-public.flcourts.org/casedocuments/2016/8/2016-8_order_208838.pdf).

case. Meanwhile, until both the Court and the Legislature act, Florida's death penalty sentencing scheme is unsettled.

Florida Statistics on Jury Votes in Death Cases

Table 1 shown below provides a fifteen year trend analysis on jury votes in death cases. Under current law and practice only 21 percent of the death cases over the past fifteen years had unanimous jury verdicts. Based on this analysis it is impossible to predict whether requiring a unanimous jury recommendation would result in a marked decline in death cases. It would appear from the current practice that a decline is likely if this bill becomes law, but the degree of the decline is uncertain.

TABLE 1

Distribution of Jury Votes in Death Cases by Calendar Year of Disposition by Florida Supreme Court[38] (N=330)

Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	Total	%[39]	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	5	3	40	12%	12%
8-4	4	6	2	6	2	0	3	0	**2**	9	2	1	5	2	3	47	14%	26%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	2	1	69	21%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	2	4	60	18%	65%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	2	1	45	14%	79%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	6	3	69	21%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	19	15	330	100%	
Other[40]	3	1	2	3	4	2	0	0	1	4	3	1	0	1	0	25		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	20	15	355		

Table 2 analyzes the degree to which a unanimous jury vote results in the case being more likely to be affirmed by the Florida Supreme Court on direct appeal. It appears that a unanimous jury vote is not strongly correlated with an affirmed sentence.

[38] Fifteen years of data collected by the Supreme Court Clerk's Office compiled by the Senate Criminal Justice staff.

[39] Calculated percentage excludes the "other" category.

[40] Includes waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.[4] Source documents: Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2000 to 2012 and Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2013 to 2014 [5] Includes: reversal and remand for trial, reduced to life, dismissal, deceased defendant, and acquittal.

TABLE 2 Distribution of Jury Votes in Death Cases Disposed by the Florida Supreme Court on Direct Appeal from Calendar Year 2000 to 2014[4] (N=330)					
Original Jury Vote For Death	**TOTAL**	**Death Sentence Affirmed**	**Percent Affirmed**	**Death Sentence Not Affirmed[5]**	**Percent Not Affirmed**
7 to 5	40	25	62%	15	38%
8 to 4	47	34	72%	13	28%
9 to 3	69	51	74%	18	26%
10 to 2	60	43	72%	17	28%
11 to 1	45	40	89%	5	11%
12 to 0	69	47	68%	22	32%
TOTAL	330	240	72%	90	28%

Comparison of Florida to Other States

Of the 32 U.S. states that currently authorize the death penalty, three, including Florida, do not require a jury verdict on life or death to be unanimous in its final sentencing recommendation or decision. The federal government also requires unanimity.[41]

Of the three states:

- Alabama authorizes a jury to recommend a death sentence on a vote of 10-2, which is non-binding on the trial court.[42] By judicial decision, every death sentence must be based on a unanimous finding of at least one aggravating circumstance.[43] Alabama also permits the judge to make a decision to issue a death sentence, even after a unanimous jury makes a recommendation for life.
- Delaware requires juries to unanimously find at least one aggravating circumstance beyond a reasonable doubt. The jury must document how each juror voted on the decision of whether aggravating circumstances outweigh the mitigating circumstances. The sentencing decision is left to the trial judge.[44]
- Florida requires neither a unanimous jury recommendation nor a unanimous finding by the jury that any aggravating circumstance has been proved.[45] A Florida jury can recommend a death sentence to the trial judge on a simple majority vote of the 12 jurors, and there is no special verdict required to reflect the vote on the aggravating circumstances.[46]

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[41] Fed. R. Crim. P. 31 (a).
[42] Ala. Code § 13A-5-46-47 (2012).
[43] *See, e.g.*, *Ex parte McNabb*, 887 So. 2d 998, 1005-05 (Ala. 2004); *Ex parte Waldrop*, 859 So. 2d 1181, 1188 (Ala. 2002); *McCray v. State*, 88 So. 3d 1, 82, and n.33 (Ala. Crim. App. 2010).
[44] Del. Code Ann. Tit. 11, § 4209(c)(3)(A) (West 2013).
[45] Even in 1976, Florida's capital sentencing scheme was particularly unique in that the jury only recommended a sentence, its recommendation need not be unanimous or by any particular numerical vote, and the trial judge was permitted to override the jury's sentencing vote, whether for a life or death sentence. *See Proffitt*, 428 U.S. at 252; *Spaziano v. Florida*, 468 U.S. 447 (1984).
[46] Fla. Stat. §§921.141(2)-(3) (2014); American Bar Association, *Death Penalty Due Process Review Project Section of Individual Rights and Responsibilities, Report to the House of Delegates (108A);* http://www.americanbar.org/news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/108a.html

III. Effect of Proposed Changes:

The bill changes the current death penalty sentencing scheme in four major ways.

The Notice of Aggravating Factors

In premeditated first degree murder cases, felony murder cases, and felony drug trafficking cases where the death penalty is a possible sentence, if the state intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court. The notice must contain a list of the aggravating factors the state intends to prove beyond a reasonable doubt in support of a death sentence.[47]

The court may allow the prosecutor to amend the notice upon a showing of good cause. This provision gives the court discretion to make decisions to allow for changing circumstances and evidentiary considerations as the case progresses.

The Jury's Findings Making the Defendant Death Eligible or Ineligible

Sections 921.141 and 921.142, F.S., are amended to require a more specified role for the jury in sentencing in cases where death is a possible sentence.

Having found the defendant guilty, in the penalty phase the jury must first find whether the defendant is death eligible. In order to find the defendant death eligible, the jury must deliberate and determine whether the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor.

The jury must return specific findings to the court *identifying each aggravating factor found to exist*. *A finding that an aggravating factor exists must be unanimous*.

If the jury does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death and will therefore be sentenced by the court to life imprisonment without the possibility of parole.

If the jury unanimously finds at least one aggravating factor, the defendant is *death eligible* and the jury continues the deliberation process in order to arrive at a sentencing recommendation.

The Jury's Sentencing Recommendation

Having found the defendant *eligible* for a sentence of death, the jury must then weigh the following to arrive at the jury's sentencing recommendation:

- Whether sufficient aggravating factors exist.
- Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
- Based upon those considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.

[47] Section 782.04(1)(b), F.S.

If a *unanimous jury* determines that the defendant should be sentenced to *death*, the jury's recommendation shall be a sentence of death. *If less than* a *unanimous jury determines that the defendant should be sentenced to death, the jury must recommend a sentence of life imprisonment without the possibility of parole.*

The Imposition of Sentence

If the jury recommends a sentence of *life* imprisonment without the possibility of parole, the *court must impose that sentence*. This eliminates the "override" by the judge of the jury's *life* sentencing recommendation.

If the jury recommends a *death* sentence, the court must consider the aggravating factor(s) found unanimously by the jury and all mitigating circumstances. *The court may then impose the death sentence unanimously recommended by the jury, or the court may impose a life sentence of imprisonment without the possibility of parole*. This provision preserves the court's ability to "override" a death recommendation by the jury.

If the court imposes a death sentence in the case, the court must write a sentencing order as is required in current law which provides the basis of the Florida Supreme Court's proportionality review on direct appeal. The court must address in its order the aggravating factors found to exist, the mitigating circumstances reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances.

Other Statutes Amended or Reenacted, Effective Date

Section 775.082(1)(a), F.S., is amended by the bill to conform that section to the new sentencing procedures created in s. 921.141, F.S. Additionally, ss. 794.011(2)(a), and 893.135(1)(b) through (l), F.S., are reenacted to incorporate amendments made by the bill.

The bill is effective upon becoming a law and the amendments made by the bill only apply to criminal acts that occur on or after the effective date.

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:

Increased litigation is expected to result from the *Hurst* decision (discussed herein), and it is likely that the application of the bill's amendments to the death penalty sentencing scheme will be the subject of litigation. However, it is not expected that there will be a significant increase in costs associated with the bill itself. No estimates of the potential fiscal impact on the courts, the state attorneys, the Office of the Attorney General, the public defenders, or Capital Collateral Regional Counsel have been submitted as of the writing of this analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 782.04, 794.011, 893.135, 921.141, and 921.142.

IX. Additional Information:

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

None.

B. Amendments:

None.

109706

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 154 - 157

and insert:

(c) If at least 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If fewer than 10 jurors determine that the defendant should be sentenced to death,

Delete lines 385 - 388

and insert:

(c) If at least 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If fewer than 10 jurors determine that the defendant should be sentenced to death,

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

And the title is amended as follows:

Delete lines 16 - 17

and insert:

such a recommendation; requiring a certain determination by at least 10 jurors to support a recommendation of a sentence of death; requiring a

163840

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1033 - 1036.

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

And the title is amended as follows:

Delete lines 30 - 31

and insert:

921.142, F.S., in references thereto; providing an effective date.

By the Committee on Criminal Justice

591-03187-16 20167068__

A bill to be entitled

An act relating to sentencing for capital felonies; amending s. 775.082, F.S.; conforming a provision to changes made by the act; amending s. 782.04, F.S.; requiring the prosecutor to give notice to the defendant and to file the notice with the court within a certain timeframe if the prosecutor intends to seek the death penalty; amending ss. 921.141 and 921.142, F.S.; requiring juries to determine the existence of aggravating factors, if any, in the penalty phase of capital cases; specifying a standard of proof for such factors; requiring unanimity for such findings; requiring a jury to make a recommendation to the court whether the defendant shall be sentenced to life imprisonment or death; specifying considerations for such a recommendation; requiring unanimity to support a recommendation of a sentence of death; requiring a sentence of life imprisonment without the possibility of parole in certain circumstances; requiring the court to enter an order meeting specified requirements in each case in which it imposes a death sentence; deleting provisions relating to advisory sentencing by juries and findings by the court in support of sentences of death; reenacting s. 794.011(2)(a), F.S., relating to sexual battery, to incorporate the amendment made to s. 921.141, F.S., in a reference thereto; reenacting s. 893.135(1)(b) through (l), F.S., relating to trafficking in controlled substances, to incorporate the amendment made to s. 921.142, F.S., in references thereto; providing applicability; providing an effective date.

591-03187-16 20167068__

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

Section 1. Paragraph (a) of subsection (1) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in a determination ~~findings by the court~~ that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

Section 2. Subsection (1) of section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

a. Trafficking offense prohibited by s. 893.135(1),

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

i. Aggravated abuse of an elderly person or disabled adult,

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

p. Resisting an officer with violence to his or her person,

q. Aggravated fleeing or eluding with serious bodily injury or death,

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism; or

3. Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list

of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.

Section 3. Section 921.141, Florida Statutes, is amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating factors enumerated in subsection (6) and for which notice has been provided pursuant to s. 782.04(1)(b) or mitigating circumstances enumerated in subsection (7) ~~subsections (5) and (6)~~. Any such evidence that

~~which~~ the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a less than unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

(3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence.

2. Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.

(b) If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one aggravating factor has been proven to exist beyond a reasonable doubt.

(4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—In

each case in which the court imposes a sentence of death, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (6) found to exist, the mitigating circumstances in subsection (7) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082.

~~(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:~~

~~(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);~~

~~(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and~~

~~(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.~~

~~(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:~~

~~(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and~~

~~(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.~~

~~In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.~~

(5) ~~(4)~~ REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules adopted ~~promulgated~~ by the Supreme Court.

(6) ~~(5)~~ AGGRAVATING FACTORS ~~CIRCUMSTANCES~~.—Aggravating factors ~~circumstances~~ shall be limited to the following:

(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death

to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

(7) ~~(6)~~ MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was

relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

(h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

(8) ~~(7)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the existence of one or more aggravating factors ~~circumstances~~ as described in subsection (6) ~~(5)~~, the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

(9) ~~(8)~~ APPLICABILITY.—This section does not apply to a person convicted or adjudicated guilty of a capital drug trafficking felony under s. 893.135.

Section 4. Section 921.142, Florida Statutes, is amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(1) FINDINGS.—The Legislature finds that trafficking in

cocaine or opiates carries a grave risk of death or danger to the public; that a reckless disregard for human life is implicit in knowingly trafficking in cocaine or opiates; and that persons who traffic in cocaine or opiates may be determined by the trier of fact to have a culpable mental state of reckless indifference or disregard for human life.

(2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony under s. 893.135, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating factors enumerated in subsection (7) and for which notice has been provided pursuant to s. 782.04(1)(b) or mitigating circumstances enumerated in subsection (8) ~~subsections (6) and (7)~~. Any such evidence that ~~which~~ the court deems to have probative value may be received, regardless of its

admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

(3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (7).

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the

mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If less than a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

(4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence.

2. Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.

(b) If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds at least one aggravating factor has been proven to exist beyond a reasonable doubt.

(5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—In each case in which the court imposes a death sentence, the court

shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (7) found to exist, the mitigating circumstances in subsection (8) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082.

~~(3) ADVISORY SENTENCE BY THE JURY. After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:~~

~~(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (6);~~

~~(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and~~

~~(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.~~

~~(4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:~~

~~(a) That sufficient aggravating circumstances exist as~~

~~enumerated in subsection (6), and~~

~~(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.~~

~~In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (6) and (7) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082, and that person shall be ineligible for parole.~~

(6) ~~(5)~~ REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review and disposition rendered by the Supreme Court of Florida within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(7) ~~(6)~~ AGGRAVATING FACTORS ~~CIRCUMSTANCES~~.—Aggravating factors ~~circumstances~~ shall be limited to the following:

(a) The capital felony was committed by a person under a sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a state or federal offense involving the distribution of a controlled substance which ~~that~~ is punishable by a sentence of at least 1 year of imprisonment.

(c) The defendant knowingly created grave risk of death to

one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.

(d) The defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person in committing the offense or in furtherance of the offense.

(e) The offense involved the distribution of controlled substances to persons under the age of 18 years, the distribution of controlled substances within school zones, or the use or employment of persons under the age of 18 years in aid of distribution of controlled substances.

(f) The offense involved distribution of controlled substances known to contain a potentially lethal adulterant.

(g) The defendant:

1. Intentionally killed the victim;

2. Intentionally inflicted serious bodily injury that ~~which~~ resulted in the death of the victim; or

3. Intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

(h) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

(i) The defendant committed the offense after planning and premeditation.

(j) The defendant committed the offense in a heinous, cruel, or depraved manner in that the offense involved torture or serious physical abuse to the victim.

(8) ~~(7)~~ MITIGATING CIRCUMSTANCES.—Mitigating circumstances

shall include the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The defendant was an accomplice in the capital felony committed by another person, and the defendant's participation was relatively minor.

(d) The defendant was under extreme duress or under the substantial domination of another person.

(e) The capacity of the defendant to appreciate the criminality of her or his conduct or to conform her or his conduct to the requirements of law was substantially impaired.

(f) The age of the defendant at the time of the offense.

(g) The defendant could not have reasonably foreseen that her or his conduct in the course of the commission of the offense would cause or would create a grave risk of death to one or more persons.

(h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

(9) ~~(8)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the existence of one or more aggravating factors ~~circumstances~~ as described in subsection (7) ~~(6)~~, the prosecution may introduce, and subsequently argue, victim impact evidence. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death.

Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

Section 5. For the purpose of incorporating the amendment made by this act to section 921.141, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 794.011, Florida Statutes, is reenacted to read:

794.011 Sexual battery.—

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

Section 6. For the purpose of incorporating the amendment made by this act to section 921.142, Florida Statutes, in references thereto, paragraphs (b) through (l) of subsection (1) of section 893.135, Florida Statutes, are reenacted to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as “trafficking in cocaine,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, or any salt, derivative, isomer, or salt of an isomer thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of

$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, or any salt, derivative, isomer, or salt of an isomer thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof,

including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

5. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death

of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), and who knows that the probable result of such importation would be the death of any person commits capital importation of phencyclidine, a

capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(e)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), commits a felony of the first degree, which felony shall be known as "trafficking in methaqualone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 200 grams or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 25 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly brings into this state 50 kilograms or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), and who knows that the probable result of such importation would be the death of any person commits capital importation of methaqualone, a capital felony punishable as provided in ss. 775.082 and

921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(f)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s.

893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of

imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(h)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as described in s.

893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of gamma-hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-hydroxybutyric acid (GHB), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(i)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is

knowingly in actual or constructive possession of, 1 kilogram or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-butyrolactone (GBL)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into the state 150 kilograms or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-butyrolactone (GBL), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(j)1. Any person who knowingly sells, purchases,

manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of 1,4-Butanediol as described in s. 893.03(1)(d), or of any mixture containing 1,4-Butanediol, commits a felony of the first degree, which felony shall be known as "trafficking in 1,4-Butanediol," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 kilograms or more, but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of 1,4-Butanediol as described in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of 1,4-Butanediol, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. A person who knowingly sells, purchases,

manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in s. 893.03(1)(c):

a. 3,4-Methylenedioxymethamphetamine (MDMA);
b. 4-Bromo-2,5-dimethoxyamphetamine;
c. 4-Bromo-2,5-dimethoxyphenethylamine;
d. 2,5-Dimethoxyamphetamine;
e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
f. N-ethylamphetamine;
g. N-Hydroxy-3,4-methylenedioxyamphetamine;
h. 5-Methoxy-3,4-methylenedioxyamphetamine;
i. 4-methoxyamphetamine;
j. 4-methoxymethamphetamine;
k. 4-Methyl-2,5-dimethoxyamphetamine;
l. 3,4-Methylenedioxy-N-ethylamphetamine;
m. 3,4-Methylenedioxyamphetamine;
n. N,N-dimethylamphetamine;
o. 3,4,5-Trimethoxyamphetamine;
p. 3,4-Methylenedioxymethcathinone;
q. 3,4-Methylenedioxypyrovalerone (MDPV); or
r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., commits a felony of the first degree, which felony shall be known as “trafficking in Phenethylamines,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $250,000.

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of any of the following substances described in s. 893.03(1)(c):

a. 3,4-Methylenedioxymethamphetamine (MDMA);
b. 4-Bromo-2,5-dimethoxyamphetamine;
c. 4-Bromo-2,5-dimethoxyphenethylamine;
d. 2,5-Dimethoxyamphetamine;
e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
f. N-ethylamphetamine;
g. N-Hydroxy-3,4-methylenedioxyamphetamine;
h. 5-Methoxy-3,4-methylenedioxyamphetamine;
i. 4-methoxyamphetamine;
j. 4-methoxymethamphetamine;
k. 4-Methyl-2,5-dimethoxyamphetamine;
l. 3,4-Methylenedioxy-N-ethylamphetamine;
m. 3,4-Methylenedioxyamphetamine;
n. N,N-dimethylamphetamine;
o. 3,4,5-Trimethoxyamphetamine;

p. 3,4-Methylenedioxymethcathinone;

q. 3,4-Methylenedioxypyrovalerone (MDPV); or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(l)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of

$100,000.

c. Is 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 7. The amendments made by this act to ss. 775.082, 782.04, 921.141, and 921.142, Florida Statutes, shall apply only to criminal acts that occur on or after the effective date of this act.

Section 8. This act shall take effect upon becoming a law.